(1) 8/23/01

No. 01-773

In The

Supreme Court of the United States

JOHN N. BACH, J. D. RITCHIE and ELAINE RITCHIE,

Petitioners,

v.

UNITED STATES OF AMERICA, INTERNAL REVENUE SERVICE, JAMES MASON, CINDY MASON, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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69 pp

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QUESTIONS PRESENTED FOR REVIEW

1. IS A DISTRICT COURT JUDGE WITHOUT OR IN EXCESS OF JURISDICTION, TO SUA SPONTE, WITHOUT ANY NOTICE, ALLOWING OF HEARING OR ARGUMENT TO PRO SE PLAINTIFFS, GRANTS HIS OWN MOTION PER FRCP, RULE 8, TO DISMISS, WHEN NO DEFENDANT HAS MADE SUCH A MOTION?

2. DID THE DISTRICT COURT ABUSE ITS DISCRETION OR ERROR IN REFUSING PRO SE PLAINTIFFS ANY FURTHER AMENDMENT TO THEIR COMPLAINT, BY DISMISSING WITH PREJUDICE THEIR FIRST AMENDED COMPLAINT, AGAIN PER RULE 8?

3. DID THE DISTRICT COURT ABUSE ITS DISCRETION OR ERROR IN DENYING PRO SE PLAINTIFF'S APPLICATION FOR 90 DAYS MORE TO SERVE ALL DEFENDANTS?

4. DID DISTRICT COURT ABUSE ITS DISCRETION OR ERROR IN DENYING PRO SE PLAINTIFFS' MOTIONS OF ENTRY OF DEFAULT AND DEFAULT JUDGMENTS AGAINST RESPONDENTS "THE HARRIS GROUP" AND "THE HARRISES" WHO FAILED TO FILE ANY ANSWERS, AND WHO WERE DENIED BY ORDER LEAVE TO FILE LATE ANSWERS?

5. DID DISTRICT COURT ABUSE ITS DISCRETION OR ERROR IN RULING PRO SE PLAINTIFFS COULD NOT STATE VIABLE FEDERAL & PENDENT CLAIMS AGAINST FEDERAL AGENCIES, OFFICIALS, JUDGES, STATE AND PRIVE PERSONS ACTING IN COLLUSION, CONSPIRACIES, CRIMINALITIES AND COMMON

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QUESTIONS PRESENTED FOR REVIEW – Continued

PURSUITS OF RICO ENTERPRISES, PER MULTIPLE LEVELS OF PAR REACHING ACTIONS, POLICIES, ETC., BY ROGUE AND RENEGADE IRS AGENTS AND EMPLOYEES?

6. DID DISTRICT COURT ABUSE ITS DISCRETION OR ERROR IN RULING PRO SE PLAINTIFFS WOULD NOT BE ALLOWED TO PURSUE VIABLE FEDERAL CIVIL RIGHTS CLAIMS?

7. DID DISTRICT COURT ABUSE ITS DISCRETION OR ERROR BY ITS ENTIRE ACTIONS IN DEPRIVING PRO SE PLAINTIFFS OF PROCEDURAL AND SUBSTANTIVE RIGHTS OF DUE PROCESS AND EQUAL PROTECTION AS TO DENY THEM SUBSTANTIAL AND FAIR JUSTICE AS WELL AS ACCESS TO THE PROCESSES OF A FEDERAL COURT?

(Petitioners submit that the only answer to all of the above questions is the word "YES.")

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LIST OF ALL PARTIES

PETITIONERS:

1. JOHN N. BACH — En Pro Se
2. J. D. RITCHIE — En Pro Se
3. ELAINE RITCHIE — En Pro Se

RESPONDENTS:

1. UNITED STATES OF AMERICA
2. INTERNAL REVENUE SERVICE
3. JAMES L. MASON
4. CINDY MASON
5. PHYLIS J. GUGIN
6. MARK DAVIS
7. AL SEEFRIED
8. CHERYL MOSBY
9. KAY MOSHER
10. HESTER PULLING
11. KEITH FARRER
12. JACK CHESKATY
13. GERALD H. MESCHELL
14. RICHARD OWENS

Joan Openheimer
Tax Division,
U.S. Dept of Justice
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Washington, D.C. 20044
(Representing Respondents 1 through 21)

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LIST OF ALL PARTIES – Continued

15. STEVE HINES
16. DONALD JENSEN
17. PAM BIGELOW
18. SID BECKSTEAD
19. CLIVE LONDON
20. MERRY TRUDEA
21. RANDY HARPER
22. EDWARD J. LODGE
23. B. LYNN WINMILL
24. LARRY BOYLE
25. MICHAEL H. WILLIAMS
26. RICHARD WARD
27. BETTY H. RICHARDSON

D. Marc Haws
Ass't U.S. Attny
U.S. ATTORNEY'S OFFICE, IDAHO
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Boise, ID 83707
(Representing Respondents 22-27)

28. BONNEVILLE COUNTY
29. BYRON STOMMEL
30. KAY CORTEZ
31. GINA DIXON
32. CHARLOTTE MUNNS
33. PAUL WILD

Carlton R. Ericson
HAMLIN & SASSER
P.O. Box 16488
Boise, ID 83715
(Representing Respondents 28-49)

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LIST OF ALL PARTIES - Continued

34. GLEN HUDERSON
35. RON LONGMORE
36. P. BLAKE MUELLER
37. JEFFERSON COUNTY
38. CONNIE KELLER
39. BLAIR OLSEN
40. STEPHEN CLARK
41. MADISON COUNTY
42. BETH REESE
43. LYLY SAUREY
44. GREGG MOFFAT
45. TERRY BAIR
46. SID BROWN
47. KIPP MANWARING
48. DAVID SASSER
49. HAMLIN & SASSER
50. ALVA A. HARRIS
51. SCONA, INC.
52. PRO INDIVISO, INC.
53. JARED HARRIS
54. EVELYN HARRIS
55. KENT CARLSON
56. CARALEE CARLSON

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and
ALVA A. HARRIS, P.O. 479,
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(Representing Respondents 50-58, known as "the Harris Group" and "the Harrises")

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57. GRANT E. HANN
58. DARRELL J. HARRIS

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CITATIONS OF OFFICIAL & UNOFFICIAL REPORTS

The short orders from the Ninth Circuit Court of Appeals denying Petitioners' Appeal and Petition for Rehearing En Banc were not to be published and only their respective Docket Numbers identify them No. 99-36180 and DC# CV 982383E – EJG Idaho (Boise).

STATEMENT OF BASIS OF JURISDICTION

1. Appeal Jurisdiction to the Ninth Circuit Court of Appeals was per 28 U.S.C. §§ 1331, 1367, 1391, 18 U.S.C. §§ 1965(a), et seq., and 42 U.S.C. §§ 1983, 1985(2)(3), 1986 and 1988.

2. Petition for Rehearing En Banc, timely filed April 6, 2001, was FRAP, Rule 35(b), CR 35-].

3. Order denying Petition for Rehearing En Banc, May 25, 2001, extended time to file this Petition with Petitioners being given through October 29, 2001 to file Amended/Corrected Petition for Writ of Certiorari. SCR, Rule 13(1), (3).

4. Basis of Jurisdiction and Considerations of Review per this Petition are SCR, Rule 10(a) and (c). The Ninth Circuit by it's "NOT FOR PUBLICATION" Memorandum, and orders of denial "has so far departed from accepted and usual course of judicial proceedings, or sanctioned such departure by a lower court, as to call for an exercise of this Court's supervisory power" and "has decided . . . important federal questions . . . conflict[ing] with relevant decisions of this Court."

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CONSTITUTIONAL PROVISIONS & STATUTES INVOLVED IN PETITION

FIRST AMENDMENT TO U.S. CONST.

FOURTEENTH AMENDMENT, SECTION 1., TO U.S. CONSTITUTION

FEDERAL STATUTES

18 U.S.C. §§ 1961-1967
42 U.S.C. § 1983
42 U.S.C. § 1985(2)
42 U.S.C. § 1985(3)
42 U.S.C. § 1986
42 U.S.C. § 1988(b)

FEDERAL RULES OF CIVIL PROCEDURE

Rule 4(m)
Rule 8(a)(2)
Rule 9(b)
Rule 12(b)(5)
Rule 12(b)(6)
Rule 16
Rule 41(b)

STATEMENT OF THE CASE

Petitioners are three of nineteen original plaintiffs, who filed on September 30, 1998, a COMPLAINT against 113 defendants, in grouping designations: A. USA, IRS and officers, agents, etc.; B. Federal Judges of U.S. District Court, Idaho; C. U.S. Attorney's Office, Idaho; D. Various State agencies, officers, etc.; E. An Idaho judge; F. Several Eastern Idaho Counties, officials' employees; G. Two

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Idaho Banks, employees; H. Private individuals and their corporations at IRS properties' sales; I. Others.

The caption took 5 pages, the body some 47 pages, setting forth federal RICO claims of multiple tiered conspiracies, joint enterprises and arrangements of illegal, state, private, IRS collection and levy activities, 18 U.S.C. §§ 1961-1967 federal civil rights claims per 42 U.S.C. §§ 1983, 1985(2)(3), 1986 and 1988, violations of 26 U.S.C. §§ 6402, 7433, et seq, declaratory, injunctive/equitable relief and 8 pendant claims. Attached exhibits were of 21 pages.

Some plaintiffs, including petitioners herein obtained assignments from property owners wrongfully levied on, seeking damages therefrom. The main averments were of conspiracies, joint ventures, enterprises, common plans, concerted actions, etc., of all defendants per multi-tiered RICO violations, including the named judges who acted outside their official capacities, per private and illegal schemes and agreements with the other defendants, but utilized their official positions to hide their involvement and to further advance/protect the illegal RICO enterprises/operations. Like averments include the named Idaho state agencies, county officials, etc.

At the core of these RICO enterprises were James Mason, his wife, Cindy, both IRS agents who with other IRS agents, employees and with private persons, state officials, individually & per their authority, acting under color of law, fueled a money laundering operation based upon false/illegal substitute tax returns prepared by Masons, and others, for petitioners, without petitioners' knowledge or approval, when no tax returns were due

nor taxes due either. Using such contrived tax returns, with assessments, penalty and interest added indiscriminately thereon, Masons and others, received unto themselves a gross 37% bonus from all liened properties and IRS sales of plaintiffs' assets. Such gross 37% bonus was above all other allowed pay, remuneration or benefits to Mason and such others.

Mason and such others targeted plaintiffs for further illegal retaliatory measures, for First Amendment rights' assertions via the "Pilot Connection", an L.D.S. church organization, who with the Oregon Observer Newspaper, were strong advocates of the reform and overhaul of taxpayers' rights. Mason, et al., put out deliberate misinformation and disparagements about plaintiffs (they were militants, bombers, terrorists, etc.) taped their phones, trespassed in their homes, curtailed, assailed, stalked and traumatized plaintiffs, their families, neighbors, employers causing plaintiffs to be obstacized, avoided, etc., by their church, community and others.

After initially serving some respondents, eleven plaintiffs filed motions to be dismissed without prejudice, and stopped further service.

The remaining plaintiffs picked up such service efforts. Respondents appearing pursued a joint strategy of filing motions to dismiss per Rules 4, and 12(b)(5). However, some served defendants ("the Harris Group" and "the Harrises") filed only written appearance but not answers; still other defendants filed answers.

No defendants filed any motions for more definite statement, nor to strike and did not file any Rule 8 motion to dismiss.

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Plaintiffs noticed depositions of the "Harris Group", only to be met with a motion for protective order, which was granted within 3 days of its filings and vacating all discovery "until the matter can be considered further at the FRCP 16 pretrial scheduling conference." No such conference was ever set despite plaintiffs' motion to do so.

June 1, 1999, Judge Edward J. Garcia, assigned from California, issued *sua sponte* without notice, service of any motion/document or setting of hearing therefor, an "ORDER DISMISSING COMPLAINT WITH LEAVE TO AMEND" stating " . . . a review of the complaint . . . has caused the court to *sua sponte* issue this order . . . with leave to amend pursuant to Rule 8 . . . " The Order cited *Conley v. Gibson*, 355 U.S. 41, 47 (1957), *McHenry v. Renne*, 84 F.2d 1172 (9th Cir. 1996); and *Nevijel v. North Coast Life Ins. Co.*, 651 F.2d 671 (9th Cir. 1981), allowing 30 days to file an amended complaint or the dismissal would be with prejudice. (None of these cited cases supported such sua sponte order, either factually or legally.)

Petitioners immediately filed motions of (1) consolidation with a pending case by IRS against several defendants; (2) to quash, vacate, etc., the June 1, 1999 ORDER, without jurisdiction, violation of due process, etc., (3) for setting of status conference & dates for hearings on all motions; and (4) for additional 30 days to file any AMENDED COMPLAINT.

An Order granting such extra 30 days to file the AMENDED COMPLAINT through August 2, 1999 was complied with by petitioners. (The Court did not rule until July 21, 1999 denying all petitioners' other motions.)

The AMENDED COMPLAINT was 30 pages without any exhibits; actual body, was 25 pages. One of "the Harris Group" filed his answer and motion for summary judgment and to dismiss all others of "The Harris Group" and "the Harrises" again filed general appearances but no answers. Still other defendants filed their Answers, as they did to the original complaint.

The majority of served defendants, combined to file, per the Court's suggestions via the *sua sponte* order, motions to dismiss now per Rule 8, Rules 4, 12(b)(5) and 12(b)(6).

Petitioners filed timely objection/opposition to such motions, requesting hearings be set on each one. They specifically requested/moved the court for another 90 days to be granted to serve all defendants, which requests were never addressed.

August 27, 1999 petitioners filed motions for (1) Entry of Default and Default Judgments against all members/corporations of the Harris Group and Harrises; (2) Striking, etc., any motions by such Harris, etc., and (3) for immediate Permanent Injunctions, etc., against named defendants, restraining purchased properties of petitioners from being resold, the return thereof to petitioners all properties and monies obtained from such illegal RICO sales, etc. A full evidentiary hearing was requested.

October 21, 1999, without any hearing allowed, there issued an ORDER OF DISMISSAL (With Prejudice) of the AMENDED COMPLAINT, per Rules 8 and 41(b) citing the same cases as in the June 1, 1999 ORDER, and giving alternative reasons for dismissal per Rules 12(b)(5), 4(m)

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and 12(b)(6). Said ORDER denied all of petitioners' filed motions.

A NOTICE OF APPEAL was timely filed, and also a request for oral argument on appeal. The Ninth Circuit Court on February 21, 2001 issued a "NOT FOR PUBLICATION" MEMORANDUM holding "We review for abuse of discretion a district court's Fed. R. Civ. P. 41(b) dismissal and affirm." See *McHenry v. Renne*, 84 F.3d 1172, 1177-78 (9th Cir. 1996)."

A timely Petition for Rehearing En Banc was filed which on May 25, 2001, was denied.

ARGUMENT

I. PREFACE

The district court's without jurisdiction and abuse of discretion rulings, reveal the exemplified judicial antagonism and revulsion of pro se litigations, denying constitutional rights, plus, not only legal but judicial ethics. Why is it that fundamental constitutional rights of access to the courts require prison authorities to assist inmates, via adequate libraries or adequate assistance from persons trained in the law but pro se petitioners as herein, are not given their due process and equal protection rights? See *Bounds v. Smith*, 430 U.S. 817, 828 (1977).

No case authorities are to be found, upon the facts presented herein which give any district court sua sponte jurisdiction to dismiss per Rule 8 a pro se complaint. In fact, case authorities are over-whelmingly to the contrary.

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> "Failure, in an initial complaint to set forth the claim by means of a short and plain statement as required by Rule 8(a)(2) is not a ground for dismissal . . . with prejudice, since . . . procedures are available for correcting a vague and prolix complaint. See *Glus v. Brooklyn Eastern District*, 356 U.S. 231, 234, . . . procedures are those provided for in Rule 12(e) . . . (motion for more definite statement); Rule 12(f) . . . (. . . to strike portions of the pleading); Rule 15 (right to amend); Rule 16 (pretrial procedure and formulation of issues); Rules 26-37 (depositions and discovery). . . . it is to be borne in mind that the spirit of the Federal Rules of Civil Procedure requires us to construe the pleadings most strongly in favor of the pleader. [Citation omitted] A liberal construction of the pleadings is especially called for where they were prepared by a layman. *Downing v. New Mexico State Supreme Court*, 10 Cir. 339 F.2d 435, 436 . . . "

DeWitt v. Pail, 366 F.2d 682, 685 (9th Cir. 1966); see *Conley v. Gibson*, 355 U.S. 41, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957); *Marshall v. Sawyer*, 301 F.2d 639, 647 (9th Cir. 1962). (*See* further cases, "II" *infra*.)

II. DISTRICT COURT WITHOUT JURISDICTION TO DISMISS PRO SE COMPLAINT, FIRST WITH LEAVE TO AMEND AND THEN WITH PREJUDICE PER RULE 8, WHEN NO DEFENDANT INITIALLY HAD MADE SUCH MOTIONS.

Two questions present themselves: (1) What authority is there for a district court, without any notice and where no respondent has raised a Rule 8 motion to issue a Rule 8 Order dismissing the complaint with leave and directing each plaintiff to set forth separate counts

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against each defendant; and (2) What procedural and substantive violations of due process and equal protection are inflicted upon pro se plaintiffs thereby? ANSWERS: None; and Many.

Petitioners have found no statutory law, no rules nor even case law, that give a district court such jurisdiction, discretion, to issue such orders as presented for review herein.

As stated in *Conley v. Gibson*, 355 U.S. 41, 48 (1957): "The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." (But of *Bautista v. L.A. County*, 216 F.3d 837 (9th Cir. 2000)).

The initial and AMENDED COMPLAINT gave "fair notice of what petitioners' claims [were] and the grounds upon which it rested." The length of a complex multi-tiered RICO and civil rights claims asserted complaint is not in and of itself a proper basis for the two Rule 8 ORDERS of dismissal. As stated in *Atwood v. Humble Oil & Refining Co.*, 243 F.2d 885, 889 (5th Cir. 1957):

> " . . . the Court could have accomplished by measures . . . adapted to the end desired and much less drastic than putting the plaintiffs entirely out of the court. Was the complaint redundant, repetitious, argumentative, verbose? If so, the offending portions could be stricken. Did it contain scandalous or impertinent matter? These could be eliminated by like procedure. Rule 12(f) . . . Humble evidently did not find these offensive elements . . . because it moved

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for amplification of portions of it rather than for abbreviation.

> . . . the pretrial procedures so carefully followed . . . afforded ample means by which the issues could be simplified . . . after extensive pre-trial hearings the Court reduced the issues it understood to be embraced within the complaint to seven, which it memorialized by a proposed order occupying but six pages in the record. Rule 16 . . . empowered the court to enter this order or one like it with such effect as would have controlled 'subsequent course of the action.'[6] But the Court did not enter the order it has so carefully worked out and did not pass specifically upon the objections plaintiffs addressed in writing to the order as drawn and did not specify wherein the additional counts they submitted failed to meet the Court's view.
>
> The pleadings, the orders of the court, and the arguments reflect that the issues involved in this case are many and varied, the amount of money sought is very large one, the leases involved are long and complicated of some length would be required to get all of the contentions presented by such a situation before the Court:[1] "What is a 'short and plain' statement depends of course on the circumstances of the case." 2 Moore's Federal Practice, 2d Ed., p. 1653. There may be cases in which mere verbosity or repetition would justify final dismissal by a trial court, but this is not, in our opinion such a case . . . "

In *Atwood*, the original complaint was 46 pages plus 74 pages of exhibits, and the many theories of recovery advanced appeared "complex and prolix."

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In *Burke v. Dowling*, 944 F. Supp. 1036 (E.D.N.Y. 1995), 1049, the court stated:

> "To be sure, plaintiffs' complaint is lengthy. It contains 115 pages and 231 numbered paragraphs and sets forth seven causes of action by thirty-three plaintiffs against ten defendants. But 'long and involved complaints do not per se fail to pass the test of sufficiency under Rule 8.' *Karlinsky v. New York Racing Ass'n*, 52 F.R.D. 40, 42 (S.D.N.Y. 1971) In view of the complexity of the schemes alleged, and the requirement of Rule 9 . . . the Amended Complaint does not seem inordinately long."
>
> [Page 1050] "Plaintiffs . . . have made allegations that are neither vague nor incomprehensive. At a minimum they place the defendants on notice of the charges against them and allow them sufficient opportunity to prepare a response. Nor are the allegations framed in a manner that places an inordinate burden on this court or opposing counsel . . . the complaint meets the standard of Rule 8.[2]"

The district court's sua sponte order and final order, violated this Court's holding in *Leatherman v. Tarrant County Narcotics Intelligence & Coordination*, 507 U.S. 163, 168, 122 L. Ed. 2d 517, 524, 113 S. Ct. 1160 (1993), that except as provided in Rule 9(b) there are no heightened rules of pleading allowed. (See *Fobbs v. Holy Cross Health System*, 29 F.3d 1439, 1449 (1994).

Petitioners' original and amended complaints averred theories of conspiracies of RICO violations of multi-tiered levels among more than one illegally operated enterprises by 113 defendants, conducting, aiding

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supporting/participating with each other and all respondents, outside the law, while utilizing their respective government positions under color of state law and federal law or authorities. Such averments are supported by this Court's decision in *U.S. v. Turkette*, 452 U.S. 576, 583 (1981); followed in *Humana, Inc. v. Forsyth*, 119 S. Ct. 710 (1999), and most recently in *Cedric Kushner v. Don King, et al.*, 121 S. Ct. 2087 (June 11, 2001). See also *U.S. v. Thompson*, 685 F.2d 993 (6th Cir. 1982).

Respondents "the Harris Group" and the "Harrises" are persons who unlawfully used enterprises, both legitimate and illegitimate, as vehicles through which their unlawful RICO activities continue to be committed against petitioners. The respondent judges are like persons who unlawfully used an enterprise, legitimately and illegitimately, their court, as a vehicle through unlawful RICO activity continues. *Averbach v. Rival Mfg. Co.*, 809 F.2d 1016, 1018 (3rd Cir.), cert. den., 482 U.S. 915 (1987) (federal court may be such an enterprise). See *U.S. v. Frega*, 179 F.3d 793 (9th Cir. 1999) (3 San Diego Superior Court judges convicted of RICO scheme and enterprise with attorney who they agreed to issue/give favorable rulings, coercing settlements in his favor in return for sharing of monetary favors, accommodations from such attorney's car dealer clients in auto purchases, exchanges, etc.) *U.S. v. Benny*, 559 F. Supp. 264, 270-71 (N.D. Cal. 1983), aff'd, 786 F.2d 1410 (9th Cir. 1983), cert. den., 479 U.S. 1017 (1986) (Court and government agencies may be such enterprises); *U.S. v. Conn.*, 769 F.2d 420 (7th Cir. 1985) (Cook County Circuit Court may be such an enterprise) and *U.S. v. Thompson, supra* (Office of Tennessee governor may be such enterprise).

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All petitioners' civil rights claims were viable; the facts deemed admitted of both the original and amended complaint per Rule 12(b)(6). Moreover, any claimed immunities simply had to be pled affirmatively and proven through discovery and summary judgment motions; there were no absolute immunities raised nor applicable as a matter of law. *Burns v. Reed*, 500 U.S. 478, 114 L. Ed. 2d 547, 111 S. Ct. 1934, 1939 (1991); *Buckley v. Fitzsimmons*, 509 U.S. 259, 269, 113 S. Ct. 2606, 2613, 125 L. Ed. 2d 209 (1993). See *Sanders v. Union Pac. R.R. Co.*, 193 F.3d 1080, 1081 (9th Cir. 1999) (Judges' renegade ultra vires acts afford no immunities). See also *Milstein v. Cooley*, 257 F.3d 1004 (9th Cir. 2001); *Rankin v. Howard*, 633 F.2d 844 (9th Cir. 1980), cert. den., 101 S. Ct. 2020, 68 L. Ed. 2d 326 (1981) (A judges' private, prior agreement to decide in a party's favor is not a judicial act and he has no immunity.); *Haddle v. Garrison*, 525 U.S. 489, 119 S. Ct. 489 (1998) (upholding claim per 42 U.S.C. § 1985(2)(3) of conspiracy to intimidate or retaliate against witnesses in federal court proceedings, etc.).

In the Ninth Circuit, a section 1983 claim is sufficient on nothing more than a bare allegation that an individual officer's or public official's conduct, conformed to official policy, custom, usage or practice. *Karim-Panahi v. L.A. Police Dept.*, 839 F.2d 621, 624 (9th Cir. 1988). See also *Fobbs v. Holy Cross Health Systems*, 29 F.2d 1439, 1449 (1994), (Plaintiff can aver more than one theory of conspiracy, i.e. of multiple conspiracies & coverups.)

The district court failed to investigate the numerous canards presented to it by respondents, especially, that respondents had not been properly served, such as the federal judges who were served via the Clerk of their

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court who signed a written statement that he had been authorized to accept personal service on behalf of all federal judges, since security prevented any other service on the judges. See *U.S. v. Lapage*, 231 F.3d 488 (9th Cir. 2000) (Court to investigate lies or deception of any party or party's attorney or their witnesses.)

The two cases cited by the district court, *McHenry v. Renne*, 84 F.3d 1172 (9th Cir. 1996) and *Nevijel v. North Coast Life Ins. Co.*, 651 F.2d 671 (9th Cir. 1981) (both 9th Circuit decisions) gave licensed plaintiffs' attorneys at least 3 times to amend their pleadings and with special assistance via directions from the court, before issuing a Rule 8 dismissal order. Factually and legally they do not provide any authority for either of said two orders of dismissal. See also *Moscowitz v. Brown*, 850 F. Supp. 1185 (S.D.N.Y. 1994) (Plaintiff given 3 opportunities to replead).

At bar, the district court's mindset is revealed as such, that under no circumstance would pro se petitioners who brought such a multiple tiered RICO claim involving federal judges, state agencies, etc., get more than one opportunity to amend their pleadings, that no discovery would be allowed them nor were they to be accorded due process or equal protection or a hearing before the court, either on their motions or at a status or pretrial scheduling conference. Even the default status of "the Harris Group" and "the Harrises" was convolutedly denied and eviscerated by the court's October 21, 2000 ORDER OF DISMISSAL WITH PREJUDICE despite petitioners' motions unopposed and further, the court's own order denying such respondents' attempt at leave to file any late answers.

III. DISTRICT ABUSED ITS DISCRETION AND ERRED IN NOT GRANTING FURTHER LEAVE TO AMEND.

Petitioners incorporate their arguments per all parts, *supra*, herein.

Petitioners have at all time herein contended, that the IRS as established and lawfully operating is not a racketeering enterprise per se. (Others are left to wax and wane on such claims) They did aver, that a group of rogue, criminally operating and unconstitutionally acting IRS agents, along with all other defendants, as aforesaid, were conducting, with at least two prior predicate acts, RICO enterprises, deriving tax moneys, outside the law, sharing a gross 37% bonus money payments from liened property sales, at which sales, such properties in further violations were sold at extremely low amounts to "the Harris Group" and "the Harrises" even when bankruptcy court's automatic stay or freeze orders against such sales were in effect, and that such 37% bonus was laundered, distributed, shared and secretly benefited from by all other defendants, who provided such rogue and criminally acting IRS agents with protection at various federal and state levels.

All petitioners' efforts at discovery of their aforesaid motions for not only default judgments against "the Harris Group" and "the Harrises" but especially for permanent injunctive relief, etc., were unconstitutionally treated, without full evidentiary hearings, no status or pretrial scheduling conferences being held, and denied by unsupported reasons within the October 21, 1999 ORDER OF DISMISSAL WITH PREJUDICE.

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Under the factual circumstances, such October ORDER is unsustainable as with prejudice and petitioners should have been granted and must be granted a further opportunity to amend their complaint.

IV. DISTRICT COURT ABUSED ITS DISCRETION, AND ERRED IN NOT GRANTING PETITIONERS 90 DAYS MORE TO SERVE ALL RESPONDENTS

As stated, *supra*, respondents by not objecting to the district court's sua sponte order of June 1, 1999 to dismiss with leave per Rule 8, where/when none of them had made such a motion, did in fact and legal effect all make general appearances. Any of their motions to dismiss per Rules 4(m) and 12(b)(5) were invalid if not deceptive.

Petitioners made requests and application to the district court for the additional time of 90 days, but no effort was made to consider let alone grant such request since the court was of an already controlling mindset to dismiss the complaint with prejudice. But as stated *supra*, such could not and should not have been the court's order.

Under the 1993 Amendments to the Federal Rules, a district court has been accorded discretion to enlarge the 120 days period for service of process "even if there is no good cause shown " *Henderson v. U.S.*, 57 U.S. 65, 663, 116 S. Ct. 1638, 1643 (1996). (Citing Advisory Committee Notes, Rule 4, 28 U.S.C. App., page 654, that Rule 4(m) "authorizes the court to relieve a plaintiff of the consequences of an application of this subdivision even if there is not good cause."

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The Ninth Circuit decisions in *De Tie v. Orange County*, 152 F.3d 1109, 1112 (9th Cir. 1998); *Electrical Specialty Co. v. Road Ranch Supply, Inc.*, 967 F.2d 309 (9th Cir. 1992); and *Boudette v. Barnette*, 923 F.2d 754, 756, required the issuing of said order requested of another 90 days to serve all respondents.

V. DISTRICT COURT ABUSED ITS DISCRETION IN DISMISSING RICO AND CIVIL RIGHTS CLAIMS PER RULE 12(b)(6)

Petitioners incorporated all prior arguments, *supra*, herein.

Petitioners' original and amended complaints set forth a good number of RICO claims against all defendants. The district court in both of its said ORDERS, June 1 and October 21, 1999, chose to absolutely ignore/failed to address such RICO averments, and simply chose to further avoid the numerous averments of conspiracies, joint ventures, concerts of action, commonality of plans, policies, actions and criminal conducts, etc., among all defendants at multiple levels of such conspiracies.

Petitioners averred more than a minimum of conspiracies and agreements among and between all defendants and more than the commission of 2 predicate acts. They were not required to plead their proof, evidence or even the fact that defendants gave their overt assent to such conspiracies, since such assent is met through the inference from each defendant's act in furtherance of the numerous conspiracies averred. *Federal Information System Corporation v. Boyd*, 754 F. Supp. 971, 975-978 (D.D.C. 1990).

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This Court in *Cedric Kushner v. Don King*, decided June 11, 2001, *supra*, stated:

> "Linquistically speaking, an employee who conducts the affairs of a corporation through illegal acts comes within the terms of a statute that forbids any 'person' unlawfully to conduct an 'enterprise,' particularly when the statute explicitly defines 'person' to include 'any individual . . . capable of holding a legal or beneficial interest in property' and defines 'enterprise to include corporation.' 18 U.S.C. §§ 1961(3), (4) And linguistically speaking, the employee and the corporation are different 'persons,' even where the employee is the corporation's sole owner. . . . RICO both protects a legitimate 'enterprise' from those would use unlawful acts to victimize it. *United States v. Turkette*, 452 U.S. 576, 591 (1981), and also protects the public from those who would unlawfully use an 'enterprise' (whether legitimate or illegitimate) as a "vehicle" through which 'unlawful . . . activity is committed.' *National Organization for Women, Inc.*, 510 U.S. at 259.
>
> A corporate employee who conducts the corporation's affairs through an unlawful RICO 'pattern . . . of activity,' § 1962(c), uses that corporation as a 'vehicle' whether he is, or is not, its sole owner."

Thusly, it is not only "the Harris Group", the "Harrises", or the Masons and all other named IRS rogue agents which were averred to be so conducting an unlawful RICO pattern of activity but also said federal judges, the U.S. attorney's office in Boise, Idaho and Idaho State agencies and officials thereof, with all other defendants, per further multi-tiered levels of conspiracies.

In *Mendocino Environment Center v. Mendocino County*, 14 F.3d 457, 465 (9th Cir. 1994), it was stated:

> " . . . governmental 'action designed to retaliate against and chill political expression strikes at the heart of the First Amendment.' *Gibson v. United States*, 781 F.2d 1334, 1338 (9th Cir. 1986), cert. denied, 479 U.S. 1054, 107 S. Ct. 928, 93 L. Ed. 2d 979 (1987) . . . 'Accordingly, the victim of such action is entitled to sue the responsible officers . . . where a plaintiff 'alleges' discrete acts of . . . surveillance and intimidation directed solely at silencing' him or her, a civil rights claim will lie . . . "

See also *Haddle v. Garrison*, 525 U.S. 489, 1195 S. Ct. 489 (1998); *Rizzo v. Goode*, 423 U.S. 362, 377 (1976).

The district court's reliance on *Billings v. U.S.*, 57 F.3d 797, 801 (9th Cir. 1995), that a 1983 claim does not lie against federal agents is not only incorrect, but is distortively cited. As stated at page 801; " . . . federal employees, like private individuals, can act under color of state law if they conspire or act in concert with state officials to deprive a person of her civil rights [citations omitted] . . . " Plaintiff averred multiple conspiracies between federal judges, I.R.S. agents, with numerous state officials, private defendants and for profit corporations. Plaintiff also averred all defendants acted with other concerts of action, in joint ventures and enterprises with each other.

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VI. DISTRICT COURT VIOLATED PRO SE PETITIONERS' RIGHTS TO PROCEDURAL AND SUBSTANTIVE DUE PROCESS AND EQUAL PROTECTION

The extent of the district court's mindset and judicial improprieties, are more egregious when intended to deprive elderly pro se litigants of access to it to have viable claims redressed by a court of last resort for them.

To paraphrase the late Justice Cardozo: "Even a sleeping dog knows the difference of his being stumbled upon or that of being deliberately kicked."

What petitioners seek is not special preference, treatment or even privilege, but equal consideration of their claims, fairly, justly, with substantial application and perfection of due process and equal protection of the laws. Such was denied them by the district's said two ORDERS.

See *Zinermon v. Burch*, 494 U.S. 113, 108 L. Ed. 2d 100, 110 S. Ct. 975 (1990).

VII. CONCLUSION

This Petition for Writ of Certiorari should be granted upon all grounds, basis or points raised and those inherently included therein or part thereof.

DATED: October 26, 2001

JOHN N. BACH
J. D. RITCHIE
ELAINE RITCHIE

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APPENDIX

1. "NOT FOR PUBLICATION" MEMORANDUM Feb. 21, 2001, U.S.C.A., Ninth Circuit, No. 99-36180 ..... App. 1

2. ORDER OF DISMISSAL [With Prejudice], Oct. 21, 1999 USDC, Idaho 98-383-E-EJG ..... App. 5

3. ORDER DISMISSING COMPLAINT WITH LEAVE TO AMEND, June 1, 1999 USDC, Idaho 98-383-E-EJG ..... App. 23

4. ORDER, May 25, 2001, U.S.C.A., Ninth Circuit, No. 99-36180, Denying Petition for Rehearing en banc ..... App. 28

5. FIRST AMENDMENT TO U.S. CONSTITUTION ..... App. 29

6. FOURTEENTH AMENDMENT TO U.S. CONSTITUTION, Section 1 ..... App. 29

7. STATUTES:

   a) 42 U.S.C. § 1983 ..... App. 30

   b) 42 U.S.C. § 1985(2) ..... App. 31

   c) 42 U.S.C. § 1985(3) ..... App. 31

   d) 42 U.S.C. § 1986 ..... App. 32

   e) 42 U.S.C. § 1988(b) ..... App. 33

8. ORDER DENYING DEFENDANTS' REQUEST FOR ADDITIONAL TIME TO FILE ANSWER, Sept. 1, 1999 ..... App. 35

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NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOHN N. BACH; GAREN HANCOCK; DETSEL J. PARKINSON; A. DEAN BOWLES; BETTY J. BOWLES; JABEZ D. RITCHIE; ELAINE RITCHIE,

Plaintiffs-Appellants,

v.

CINDY MASON; PHYLIS J. GUGIN; MARK DAVIS; AL SEEFRIED; CHERYL MOSBY; KAY MOSHER; HESTER PULLING; KEITH FARRER; JACK CHESKATY; GERALD H. HESCHELL; RICHARD OWENS; STEVE HINES; DONALD JENSEN; PAM BIGELOW; SID BECKSTEAD; CLIVE LONDON; MERRY TRUDEAU; RANDY HARPER, Federal agencies and officers, Internal Revenue Service; EDWARD J. LODGE; B. LYNN WINMILL; LARRY BOYLE; MICHAEL H. WILLIAMS, Federal Judges; RICHARD WARD;

No. 99-36180

D.C. No. CV-98-00383-EJG

MEMORANDUM[1]

(FILED Feb. 21, 2001)

[1] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir. R. 36-3.

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BETTY RICHARDSON, United States Attorneys Office; BONNEVILLE COUNTY; BONNEVILLE COUNTY SHERIFF; BYRON STOMMELL; KAY CORTEZ; GINA DIXON; CHARLOTTE MUNNS; PAUL WILD; GLENN HUDERMAN; BONNEVILLE COUNTY CLERK; RON LONGMORE; BONNEVILLE COUNTY ASSESSOR; JEFFERSON COUNTY; JEFFERSON COUNTY RECORDER; JEFFERSON COUNTY SHERIFF; BLAIR OLSEN; JEFFERSON COUNTY PROSECUTOR; ROBIN DUNN; STEPHEN CLARK; MADISON COUNTY, IDAHO; MADISON COUNTY RECORDER; BETH REESE; MADISON COUNTY ASSESSOR; LYLE SAUREY; MADISON COUNTY SHERIFF; GREGG MOFFAT; TERRY BAIR: MADISON COUNTY PROSECUTOR; SID BROWN; KIP MANWARING; PRO INDIVISO, INC., an Idaho Corp.; SCONA, INC., an Idaho Corp., ALVA A. HARRIS; JARED HARRIS; EVELYN HARRIS; KENT CARLSON; CARELEE CARLSON;

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GRANT E. HANN; DARRELL J. HARRIS; RAY RIGBY,

Defendants-Appellees,

and

STATE OF IDAHO TAX COMMISSION; DARYL JONES; ATTORNEY GENERAL'S OFFICE; ALAN G. LANCE; IDAHO STATE BAR, State agencies and officers; RICHARD J. ST. CLAIR, Judge; TED W. WOOD, Judge; FREMONT COUNTY, IDAHO; FREMONT COUNTY PROSECUTOR; FREMONT COUNTY SHERIFF; TERRY THOMPSON; FREMONT COUNTY CLERK & RECORDER; MICKIE FUNKE; JEROME COUNTY; JEROME COUNTY SHERIFF; JEROME COUNTY CLERK; TETON COUNTY, IDAHO; TETON COUNTY CLERK; TETON COUNTY ASSESSOR; CITY OF ST. ANTHONY; CITY POLICE; MAYOR, CITY OF ST. ANTHONY; ROY PARKER; CITY ATTORNEY, CITY OF ST. ANTHONY; LISA BERTOSCH; TIM WILSON; CARLTON ERICKSON; ST. ANTHONY CITY COUNCIL; EVELYN MASON;

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RICHARD LAW; US BANK/ WEST ONE BANK; MARK BYERLY; LARRY DROLLINGER; NELDA DROLLINGER; JOHN SANDERS; BRUCE OLSEN; WILLIAM TULLOCK; BOBBIE SUE TULLOCK; DOES 1-200,

Defendants.

Appeal from the United States District Court
for the District of Idaho
Edward J. Garcia, District Judge, Presiding

Submitted February 12, 2001[2]

Before: LEAVY, THOMAS, and RAWLINSON, Circuit Judges.

Appellants appeal pro se the district court's dismissal of their action with prejudice for failing to comply with the court's order to provide "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). We have jurisdiction under 28 U.S.C. § 1291. We review for abuse of discretion a district court's Fed. R. Civ. P. 41(b) dismissal and affirm. *See McHenry v. Renne*, 84 F.3d 1172, 1177-78 (9th Cir. 1996).

The clerk shall file appellants' additional reply briefs previously received on May 26, 2000, and June 8, 2000. The requested relief contained therein is denied.

AFFIRMED.

[2] Because we unanimously find this case suitable for decision without oral argument, we deny appellants' request for oral argument. *See* Fed. R. App. P. 34(a)(2).

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

JOHN N. BACH, et al.,

Plaintiffs,

v.

JAMES L. MASON, et al.,

Defendants.

_____/

CIV. NO. 98-0383-E-EJG/PAN

ORDER OF DISMISSAL

This matter is before the court on various motions. Specifically, the following defense motions have been made: (1) the IRS defendants[1] and defendant Richard Wards' motion to dismiss; (2) the Bonneville County defendants,[2] the Jefferson County defendants,[3] the Madison County defendants,[4] defendant David Sasser, and

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[1] The IRS defendants consist of James Mason, Cindy Mason, Phylis Gugin, Mark Davis, Al Seefried, Cheryl Mosby, Kay Mosher, Hester Pulling, Keith Farrer, Jack Cheskaty, Gerald Heschell, Richard Owens, Steve Hines, Donald Jensen, Pam Bigelow, Sid Beckstead, Clive London, Merry Trudeau, and Randy Harper.

[2] The Bonneville County defendants consist of Bonneville County, Bonneville County Sheriff Byron Stommel, Kay Cortez, Gina Dixon, Charlotte Munns, Paul Wild, Glenn Huderman, Bonneville County Clerk Ron Longmore, and Bonneville County Assessor P. Blake Mueller.

[3] The Jefferson County defendants consist of Jefferson County, Jefferson County Recorder Connie Keller, Jefferson County Sheriff Blair Olson and Stephen Clark.

[4] The Madison County defendants consist of Madison County, Madison County Recorder Beth Reese, Madison County Assessor Lyle Saurey, Madison County Sheriff Greg Moffatt,

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was reassigned to the undersigned of the Eastern District of California.

Thereafter, this court allowed six of the plaintiffs to withdraw from the action. By this time, many of the defendants had filed motions to dismiss. Nevertheless, on June 1, 1999, the court issued an order in which it *sua sponte* dismissed plaintiffs' complaint, without prejudice, for failure to comply with Rule 8 of the Federal Rules of Civil Procedure. On June 15, 1999, the plaintiffs sought and were granted a thirty day extension of time in which to file their amended complaint. Plaintiffs' amended complaint was then filed on August 2, 1999.[6] In response, the above listed motions were filed and the court now issues the following order.

DISCUSSION

A. Federal Rule of Civil Procedure 8

On June 1, 1999, this court issued an order in which it *sua sponte* dismissed plaintiffs' complaint, with leave to amend, for failure to comply with Rule 8 of the Federal Rules of Civil Procedure. In that order, the court specifically listed the complaint's major flaws and then set forth some basic pleading requirements for plaintiffs to adhere to when they drafted their amended complaint. The court cautioned plaintiffs that failure to amend so as

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[6] The order granting plaintiffs an extension of time to file their amended complaint stated that the complaint needed to be filed with the court by August 1, 1999. However, since August 1 was a Sunday, plaintiffs properly filed their complaint on Monday, August 2.

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to comply with Rule 8 could result in dismissal with prejudice. After receiving a thirty day extension, plaintiffs filed their amended complaint on August 2, 1999.

Now, the IRS defendants, defendant Richard Ward, the federal judges, and United States Attorney Betty Richardson move to dismiss the amended complaint pursuant to Rule 8. A complaint which fails to comply with Rule 8 may be dismissed with prejudice pursuant to Rule 41(b). *See Nevijel v. North Coast Life Ins. Co.*, 651 F.2d 671, 673 (9th Cir. 1981). Rule 41(b) provides in part that a defendant may move for dismissal of an action if a plaintiff fails to comply with the Federal Rules of Civil Procedure or an order of the court.

Although plaintiffs in the instant action have made cosmetic changes to their complaint, it still does not comply with either Rule 8 or this court's previous order. In fact, the amended complaint is as confusing, verbose, and unintelligible as the original complaint. In addition, it still lacks the required specificity. For example, plaintiffs' principal allegations regard the seizure of their properties. Yet plaintiffs do not make clear exactly which properties were seized, exactly which defendants seized these properties, and exactly when these seizures occurred. Conclusory allegations do not give the defendants fair notice of what the plaintiffs' claims are and the grounds upon which they rest. *See Conley v. Gibson*, 355 U.S. 41, 47 (1957).

Moreover, it appears that plaintiffs have all but ignored this court's pleading suggestions. For instance, in the order this court stated that "plaintiffs must specify which defendants are liable for which claims. Some of the

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claims cannot be pled against all of the defendants." Despite this admonition, plaintiffs have attempted yet again to bring most of the federal claims against all of the defendants. As discussed more fully below, this is improper. Also in the order, the court noted that "the complaint contains hardly any dates." Plaintiffs have not corrected this flaw in the amended complaint thus making it difficult for the court to determine whether their complaint is time-barred. Lastly, despite being told to do so, plaintiffs have failed to specify which facts support which of their claims.

Before dismissing an action under Rule 41(b), however, a district court should first attempt other less drastic alternatives. *See Nevijel*, 651 F.2d at 674. "These less drastic alternatives [can] include allowing further amended complaints, allowing additional time, or insisting that [the party] associate experienced counsel." *Id*. This court has tried less drastic alternatives in this case to no avail. First, the court allowed plaintiffs to amend their complaint after giving them explicit drafting instructions. Second, the court granted plaintiffs a thirty day extension of time in which to file their amended complaint. Lastly, the court directed the plaintiffs to read Rule 11 of the Federal Rules of Civil Procedure and noted that Rule 11's sanction provision applies to parties in *pro per*. Despite this warning, plaintiffs have not indicated to the court that they wish to hire an attorney. Accordingly, the court finds that dismissal of this action under Rule 41(b) with prejudice is appropriate.

Again, the court recognizes that the plaintiffs are proceeding without legal counsel. However, "[p]ro se litigants must follow the same rules of procedure that

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govern other litigants." *King v. Ativeh*, 814 F.2d 565, 567 (9th Cir. 1987). In addition, the lead plaintiff in this case, John Bach, is a former attorney. He is therefore presumably capable of drafting a comprehensible and legally sufficient complaint setting forth plaintiffs' claims.

For the above reasons, the IRS defendants, defendant Richard Ward, the federal judges, and United States Attorney Betty Richardsons' motion to dismiss pursuant to Rule 8 is granted with prejudice. The action is also dismissed with prejudice as to all defendants on this basis. *See Silverton v. Department of Treasury*, 644 F.2d 1341, 1345 (9th Cir. 1981) (*sua sponte* dismissal of action against non-moving defendants is appropriate where "such defendants are in a position similar to that of moving defendants or where claims against such defendants are integrally related").

Although this ruling disposes of the entire action, some of the defendants have moved to dismiss plaintiffs' complaint on other grounds. As discussed below, these grounds provide alternative reasons for dismissing plaintiffs' complaint.

B. Federal Rule of Civil Procedure 4(m)

A Rule 12(b)(5) motion to dismiss for insufficiency of service of process has been made in all of the defense motions except for Jared Harris'. Specifically, these defense motions contend that plaintiffs have failed to comply with Rule 4(m) of the Federal Rules of Civil Procedure.

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Rule 4(m) requires dismissal without prejudice when a defendant is not served with a copy of the summons and complaint within 120 days after the filing of the complaint. Here, plaintiffs filed their original complaint on September 30, 1998. Thus, the 120 day period would have expired on January 28, 1999. The moving defendants have submitted affidavits which demonstrate that none of them were served within the 120 day period required by Rule 4(m).[7]

Nevertheless, Rule 4(m) requires a court to extend the time for service for an appropriate period if the plaintiffs show good cause for the failure to effect timely service. If good cause is not shown, it is discretionary with the court whether to grant an extension or whether to dismiss the action without prejudice. In this case, plaintiffs have not explained their failure to effect timely service of the original complaint. In fact, plaintiffs have also failed to timely serve all of the defendants with a copy of the amended complaint.

Therefore, the court could dismiss this action against the moving defendants without prejudice pursuant to Rule 4(m). However, the court has already concluded that dismissal of this action against all defendants should be with prejudice for plaintiffs' failure to comply with Rule 8. This resolution makes it unnecessary for the court to dismiss the action without prejudice per Rule 4(m) or to decide the other service of process motions that defendants have filed.

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[7] The court also notes that there are many other defendants in this case which have not been timely served or have never been served.

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C. Federal Rule of Civil Procedure 12(b)(6)

Next, the IRS defendants, defendant Richard Ward, and defendant Jared Harris have filed various motions to dismiss pursuant to Rule 12(b)(6) for failure of plaintiffs' complaint to state claims upon which relief can be granted. The sufficiency of each of the federal claims will be briefly discussed below.

1. RICO Claim

Plaintiffs first allege that defendants have violated the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq.* To state a claim under RICO plaintiffs must demonstrate: (1) the conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. *See Sun Savings and Loan Association v. Dierdorff*, 825 F.2d 187, 191 (9th Cir. 1987). In addition, plaintiffs must allege a causal connection between the pattern and the injury to the plaintiffs. *See Grimmett v. Brown*, 75 F.3d 506, 510 (9th Cir. 1996).

In the amended complaint, plaintiffs make the following allegations regarding RICO:

> All of said defendants and each of them, have engaged, participated and conduct, and continue this date to so conduct themselves, having committed more than two (2) predicate acts involving interstate commerce, so as to violated, jointly and severally, in multi-layers of illegal and corrupt activities and pursuits, the Federal R.I.C.O. Act, 18 U.S.C. §§ 1961-1068. See Amended Compl. ¶ 28.)

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These general and conclusory allegations fail to state a RICO claim. These statements fail to identify the actions of each defendant or to allege the predicate acts necessary to allege a pattern of racketeering activities with the requisite specificity. Accordingly, plaintiffs' RICO claim is dismissed for failure to state a claim upon which relief can be granted.

2. 26 U.S.C. §§ 6331, 6343, and 7426

Next, plaintiffs allege that some of the defendants have violated 26 U.S.C. §§ 6331, 6343, and 7426. Section 6331 authorizes the federal government to levy upon, distrain, and seize the property or property interests of taxpayers who neglect or refuse to pay taxes. Section 6343 provides the basis for releasing property which has been levied upon. Neither section provides for a right of action.

Section 7426 provides that a third party may file a civil action against the United States in federal court as the remedy for a wrongful levy. This section is not applicable here because first the United States is not a named defendant and second the plaintiffs are the taxpayers levied upon and not third parties. (*See* Amended Comp. §§ 18-19.) Thus, these claims are also dismissed.

3. 26 U.S.C. §§ 7433 and 6343(a)

Plaintiffs also allege that 26 U.S.C. §§ 7433 and 6343(a) were violated. Section 7433 authorizes taxpayers to bring a civil action for damages against the United States for certain unauthorized collection actions. The

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only authorized defendant under this code section, however, is the United States. Since the United States is not a named defendant in this action and since plaintiffs cannot bring an action under this section against the other defendants, this claim must be dismissed. Plaintiffs' allegations under section 6343 have already been discussed and dismissed above.

4. 26 U.S.C. § 7432 and 28 U.S.C. § 2410

Plaintiffs allege next that 26 U.S.C. § 7432[8] and 28 U.S.C. § 2410 were violated. Section 7432 of Title 26 authorizes civil damages for failure of an officer or employee of the IRS to release a lien. Section 2410 of Title 28 permits the United States to be named as a party in certain actions affecting property on which the United States has a lien. Only the United States can be sued under these two code sections. Since the United States is not a named defendant in this action, these claims must be dismissed.

5. 42 U.S.C. § 1983

Plaintiffs have alleged numerous claims pursuant to 42 U.S.C. § 1983. However, plaintiffs improperly attempt to bring these claims against *all* of the defendants. As noted in the court's previous order, claims under 42 U.S.C. § 1983 can only be brought against individuals acting under color of state law. *See Billings v. United*

[8] The code section plaintiffs cite. 28 U.S.C. § 7432, does not exist so the court assumes that plaintiffs meant to cite 26 U.S.C. § 7432.

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States, 57 F.3d 797, 801 (9th Cir. 1995). Accordingly, plaintiffs' § 1983 claims must be dismissed to the extent that they are brought against individuals acting under color of federal law or non-governmental individuals.

With that in mind, the court now turns to plaintiffs' various § 1983 claims.

a. First Amendment

Plaintiffs allege in a conclusory fashion that their rights as established by the First Amendment were violated. Plaintiffs do not specify what the First Amendment violation is or the facts supporting it. Since plaintiffs make no allegations supporting their claim that their constitutionally protected right to free speech was violated, this claim is dismissed.

b. Fifth Amendment

Next, plaintiffs allege, pursuant to 42 U.S.C. § 1983, that *all* of the defendants violated their rights under the Fifth Amendment. However, the Fifth Amendment applies to and restricts only the federal government and federal actors. *See Geneva Towers Tenants Organization v. Federated Mortgage Investors*, 504 F.2d 483, 487 (9th Cir. 1974). As noted above, claims under 42 U.S.C. § 1983 cannot be brought against individuals acting under color of federal law. Thus, the Fifth Amendment allegations are improper and are accordingly dismissed.

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c. Eighth Amendment

An allegation that defendants violated the Eighth Amendment is pled next. The Eighth Amendment provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Plaintiffs do not specify which clause of the Eighth Amendment they invoke. Although there is an allegation that some of the plaintiffs were arrested, there are no allegations regarding bail or fines. In addition, the cruel and unusual provision is inapplicable here because it applies only to those who have been convicted of a crime. *See City of Revere v. Massachusetts General Hospital*, 463 U.S. 239, 243-44 (1983). There are no allegations that any of the plaintiffs were ever convicted of a crime.

d. Thirteenth Amendment

Plaintiffs also allege that defendants violated the Thirteenth Amendment, the Amendment which abolished slavery and involuntary servitude. Plaintiffs appear to be arguing that they are "slaves" because they have to pay income taxes. That is patently frivolous. First, the Sixteenth Amendment to the Constitution gives Congress the power "to lay and collect taxes on incomes." Second, the Ninth Circuit has already considered and rejected such arguments. *See, e.g., Kesev v. Commissioner of Internal Revenue*, 457 F.2d 369, 370 (9th Cir. 1972). Accordingly, plaintiffs' claims under the Thirteenth Amendment are dismissed.

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e. Fourteenth Amendment

Plaintiffs' last 42 U.S.C. § 1983 claim involves the Fourteenth Amendment. Again, as with previous claims, plaintiffs do not specify which provisions of the Fourteenth Amendment they are invoking. Accordingly, they have failed to state a claim upon which relief can be granted under the Fourteenth Amendment. Nevertheless, to the extent plaintiffs are purporting to bring a claim under the equal protection clause, they fail. "To state a claim under 42 U.S.C. § 1983 for a violation of the Equal Protection Clause of the Fourteenth Amendment a plaintiff must show that the defendants acted with an intent or purpose to discriminate against the plaintiff based upon membership in a protected class." *Barron v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998). Plaintiffs have not alleged that they are members in a protected class and have not alleged any information in which that can be inferred.

6. 42 U.S.C. § 1985(2)

Next, plaintiffs allege that defendants violated 42 U.S.C. § 1985(2). "Section 1985(2) contains two clauses that give rise to separate causes of action." *See Portman v. County of Santa Clara*, 995 F.2d 898, 908 (9th Cir. 1993). The first clause concerns access to federal courts. *Id.* at 909. Although plaintiffs contend that they were denied access to this court, they provide no factual allegations to support that statement. The second clause concerns access to state or territorial courts. *Id.* However, "the second clause of section 1985(2) [requires] an allegation of class-based animus for the statement of a claim under that clause." *Id.*

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Here, plaintiffs have not alleged that they were denied access to any state courts because they are members of a protected class. Overall, plaintiffs have no claims under 42 U.S.C. § 1985(2).

7. 42 U.S.C. § 1985(3)

Plaintiffs also allege that defendants violated 42 U.S.C. § 1985(3). To properly plead a claim under § 1985(3), a complaint must have sufficient allegations that defendants' conduct was motivated by a racial or otherwise class-based, invidiously discriminatory animus. *Trerice v. Pedersen*, 769 F.2d 1398, 1402 (9th Cir. 1985). "Such animus constitutes an essential element of a cause of action under section 1985(3)." *Id.*

Here, plaintiffs' complaint does not allege the requisite animus, nor does it contain any factual allegations from which a race or class-based animus can be inferred. Because the complaint does not contain the necessary allegations, the 42 U.S.C. § 1985(3) claim is unsupportable and is hereby dismissed.

8. 42 U.S.C. §§ 1986 and 1988

Plaintiffs' next to last federal claims are brought pursuant to 42 U.S.C. §§ 1986 and 1988. First, as to plaintiffs' claim under § 1986, the Ninth Circuit has adopted the broadly accepted principle that a cause of action is not provided under 42 U.S.C. § 1986 absent a valid claim for relief under § 1985. *Trerice*, 769 F.2d at 1403. Accordingly, plaintiffs' § 1986 claim must be dismissed since their § 1985 claims were dismissed.

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Second, section 1988 of Title 42 of the United States Code provides that in certain civil rights actions the district court may, in its discretion, award the prevailing party reasonable attorneys' fees. Section 1988, however, does not provide an independent cause of action for civil rights violations. *See Brower v. Inyo County*, 817 F.2d 540, 546 (9th Cir. 1987), rev'd on other grounds, 489 U.S. 593 (1989). Thus, plaintiffs have failed to state a claim under § 1988.

9. 26 U.S.C. §§ 6402 and 7433

Lastly, plaintiffs allege 26 U.S.C. §§ 6402 and 7433 were violated. Section 6402 deals with credits and refunds. Plaintiffs do not clarify the nature of their claims under § 6402. Nevertheless, § 6402(f) provides that "[n]o court of the United States shall have jurisdiction to hear any action, whether legal or equitable, brought to restrain or review a reduction authorized by subsection (c), (d), or (e)." Therefore, to the extent the plaintiffs are asking this court to restrain or review a reduction, this court lacks jurisdiction. As for plaintiffs' allegations under section 7433, they have already been discussed and dismissed above.

D. Plaintiffs' Motions

In addition to the above defense motions, the court has under submission various motions filed by the plaintiffs. First, plaintiffs have moved for entry of default judgment against defendants Pro Indiviso, Inc., Scona Inc., Alva Harris, Jared Harris, Evelyn Harris, Kent Carlson, Grant Hann, and Darrell Harris. Second, plaintiffs

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request that the court sanction these defendants and strike their answers and motions for summary judgment. Lastly, plaintiffs seek a permanent injunction to restrain these defendants from selling any real properties obtained from the plaintiffs. Each of these motions will be discussed in turn.

1. Motion for Entry of Default Judgment

Pursuant to Rule 55 of the Federal Rules of Civil Procedure, plaintiffs seek entry of default judgment against defendants Pro Indiviso, Inc., Scona, Inc., Alva Harris, Jared Harris, Evelyn Harris, Kent Carlson, Grant Hann, and Darrell Harris. Rule 55 describes a two-step process by which a default judgment may be entered. First, under Rule 55(a), a plaintiff may request the clerk to enter a default against a party upon a showing that the party "has failed to plead or otherwise defend as provided by these rules. . . . " After entry of default, and upon application by the plaintiff, a default judgment may then be entered by the clerk or by the court pursuant to Rule 55(b).

Plaintiffs have improperly asked this court to enter a default judgment without first obtaining an entry of default by the clerk. Since plaintiffs' motion for entry of default judgment is improper, it is denied.

2. Motion for Sanctions

Next, plaintiffs ask the court to sanction these defendants and to strike their answers and motions due to

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their alleged default. An explanation of some terminology is in order here. When a defendant is in "default," it simply means that "the defendant has failed to plead or otherwise respond to the complaint within the time required by the Federal Rules." *See* Schwarzer, Tashima & Wagstaffe *Federal Civil Procedure Before Trial* ¶ 6:2 (1999). Defendant's default by itself, however, has no legal consequences. *Id.* at ¶ 6:3. "Until the default is 'entered' by the court clerk, defendant can still appear in the action." *Id.* In other words, "if no default has yet been 'entered,' the clerk must accept for filing defendant's pleadings or motions although they are filed late. Once they are filed, it is too late for entry of default, and defendant can proceed with its defense." *Id.*

Since no default was entered here, the clerk properly accepted the said defendants' answers and motions. Therefore, plaintiffs' motion for sanctions and to strike defendants' answers and motions is denied.

3. Motion for Permanent Injunction

Finally, plaintiffs seek a permanent injunction to restrain certain defendants from selling any real properties they may have obtained from the plaintiffs. In addition, plaintiffs seek to require defendants to return plaintiffs' real properties. The requirements for the issuance of a permanent injunction, which are not cited by the plaintiffs, are "the likelihood of substantial and immediate irreparable injury and the inadequacy of remedies at law." *LaDuke v. Nelson*, 762 F.2d 1318, 1330 (9th Cir. 1985), modified, 796 F.2d 309 (9th Cir. 1986). The court declines to address plaintiffs' request for a

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permanent injunction because plaintiffs did not even make an attempt to show the court that they meet the specific standards which permit the grant of a permanent injunction.

CONCLUSION

1. The IRS defendants, defendant Richard Ward, the federal judges, and United States Attorney Betty Richardsons' motion to dismiss pursuant to Rule 8 is granted. For the reasons stated above, this action is now dismissed with prejudice as to *all* defendants.

2. The IRS defendants, defendant Richard Ward, and defendant Jared Harris' motion to dismiss pursuant to Rule 12(b)(6) is also granted.

3. These resolutions moot the need to decide any motions brought pursuant to Rule 12(b)(5) and Rule 4.

4. Plaintiffs' motion for entry of default judgment, for sanctions, and for a permanent injunction is denied.

5. The Clerk of Court is directed to close this file.

IT IS SO ORDERED.

Dated: October 21, 1999

/s/ Edward J. Garcia
EDWARD J. GARCIA, JUDGE
UNITED STATES
DISTRICT COURT

11/29/01 THU 18:06 FAX 402 342 5440 COCKLE PRINTING 2058

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

KOREEN MORGAN, et al.,
Plaintiffs,
v.
JAMES L. MASON, et al.,
Defendants.
/

CIV. NO. 98-0383-E-EJG/PAN

ORDER DISMISSING COMPLAINT WITH LEAVE TO AMEND

(Filed June 1, 1999)

This matter is before the court on numerous defendants' motions to dismiss. However, a review of the complaint in this action has caused the court to *sua sponte* issue this order. For the reasons stated below, the complaint is dismissed with leave to amend pursuant to Rule 8 of the Federal Rules of Civil Procedure.

DISCUSSION

Rule 8(a) of the Federal Rules of Civil Procedure requires a complaint to set forth "a short and plain statement of the claim showing that the pleader is entitled to relief." Rule 8(e) requires that each averment of a pleading be "simple, concise and direct." These rules are designed to give the defendant "fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Conley v. Gibson*, 355 U.S. 41, 47 (1957). A complaint which fails to comply with Rules 8(a) and 8(e) can be dismissed *sua sponte* by a court. *See McHenry v. Renne*, 84 F.3d 1172 (9th Cir. 1996); *see also Nevijal v. North Coast Life Ins. Co.*, 651 F.2d 671 (9th Cir. 1981) (affirming a district court's dismissal of a complaint with prejudice for failure to

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comply with Rules 8(a) and 8(e)).Plaintiffs' complaint in the instant action fails under the standards of Rule 8. The complaint, brought by 13 plaintiffs, is 47 pages long with an additional 19 pages of exhibits. It contains 69 paragraphs and alleges numerous causes of action against 113 named defendants and 200 doe defendants. Broadly construed, it appears to allege a conspiracy between the IRS, City and County law enforcement, City and County prosecutors, City and County executives, and County and Federal judges to deprive plaintiffs of their constitutional rights. The complaint is verbose, convoluted and extremely difficult to comprehend. In addition, many of the allegations are irrelevant or stated in a conclusory fashion.

The complaint's major flaw, however, is its lack of specificity. No attempt is made to match up the specific factual allegations and the specific legal claims to specific defendants. In other words, the complaint does not state which defendants are liable on which of the claims. Instead, each claim says "defendants' " conduct violated various rights of plaintiffs, without saying which defendants. However, some of the claims cannot be pled against *all* of the defendants. For example, plaintiffs' 42 U.S.C. § 1983 claims can only be brought against individuals acting under color of state law and not against individuals acting under color of federal law. *See Billings v. United States*, 57 F.3d 797, 801 (9th Cir. 1995). Thus, plaintiffs incorrectly allege § 1903 claims against the Internal Revenue Service defendants which plaintiffs contend acted under color of federal law. Other such examples exist in the complaint.

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In addition to the complaint's lack of specificity in regards to the defendants, the complaint contains hardly any dates. Specific time frames are seldom alleged making it difficult for the court to determine whether the applicable statutes of limitations have run.

The court is cognizant of the fact that the plaintiffs are acting in *pro per*.[1] However, although liberally construed, *pro per* pleadings "must meet some minimum threshold in providing a defendant with notice of what it is that it allegedly did wrong." *Brazil v. United States Dept. of Navy*, 66 F.3d 193, 199 (9th Cir. 1995). Here, defendants have not been given fair notice of the claims against them.[2]

Although the court cannot rewrite plaintiffs' deficient complaint, the court will set forth some basic pleading requirements that plaintiffs must adhere to when drafting their amended complaint. First, plaintiffs must specify which defendants are liable for which claims. Some of the claims cannot be pled against all of the defendants. Second, plaintiffs must separate their claims so that only *one* claim is pled under each heading. As an example, on page 37 of the complaint the heading reads "Violations of 42 U.S.C. § 1983." Under this heading, it is alleged that defendants violated the First through Eighth and Thirteenth through Fourteenth Amendments. This is

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[1] However, the court notes that one of the plaintiffs, John Bach, is a former attorney. (Complaint at ¶ 38(c).)

[2] For instance, the IRS defendants note in their motion to dismiss that "[i]t is not clear from the Complaint which IRS defendants took actions against which plaintiffs." (IRS Defendants' Motion to Dismiss at 3.)

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really ten separate claims and should be pled as such. *See* Fed. R. Civ. P. 10(b) (requiring each claim founded upon a separate transaction or occurrence to be stated in a separate count).

Third, plaintiffs need only plead facts which are relevant to their various claims. Moreover, plaintiffs must identify which of those facts support which of their claims. Lastly, the court is in receipt of numerous defendants' motions to dismiss. Although the court declines to decide those motions at this time,[3] it notes that some of defendants' arguments appear to be meritorious. Thus, plaintiffs are encouraged to review the various defendants' motions and to make the appropriate adjustments to their amended complaint.

In that regard, the plaintiffs are also directed to read Rule 11 of the Federal Rules of Civil Procedure. Rule 11, which authorizes the court to impose sanctions when a complaint is frivolous, legally unreasonable, without factual foundation, or is brought for an improper purpose, explicitly applies to parties not represented by attorneys. *See Warren v. [Illegible]*, 29 F.3d 1386, 1390 (9th Cir. 1994).

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[3] Most of the defendants have moved to dismiss the complaint pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. This rule provides that service must be made upon defendants within 120 days of the filing of the complaint. In determining whether to exercise its discretion to dismiss the complaint under this rule, the court must consider various factors such as whether the statute of limitations has run. Because plaintiffs' complaint it so poorly drafted, the court is unable to make those determinations at this time. However, defendants may renew their motions after the amended complaint is filed.

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CONCLUSION

Based on the foregoing and pursuant to Rule 8 of the Federal Rules of Civil Procedure, the court dismisses plaintiffs' complaint with leave to amend. Plaintiffs are given thirty days leave to amend from the filing date of this order. **Failure to timely amend will convert this dismissal to one with prejudice.** Plaintiffs are also admonished that failure to amend so as to comply with Rule 8 may also result in dismissal with prejudice. *See Nevijel v. North Coast Life Ins. Co.*, 651 F.2d 671 (9th Cir. 1981).

In the event plaintiffs timely amend, *all* defendants (including the ones that have already answered or filed motions) shall answer or otherwise respond within twenty days after service of the amended complaint. To the extent the defendants' responses to plaintiffs' amended complaint will be identical to their responses to the initial complaint, the defendants may refile the same answers or motions.

IT IS SO ORDERED.

Dated: May 27, 1999

/s/ Edward J. Garcia
EDWARD J. GARCIA, JUDGE
UNITED STATES
DISTRICT COURT

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOHN N. BACH; et al., Plaintiffs-Appellants, v. CINDY MASON; et al., Defendants-Appellees. and STATE OF IDAHO TAX COMMISSION; et al., Defendants.	No. 99-36180 DC# CV-98-00383-EJG Idaho (Boise) ORDER (Filed May 25, 2001)

Before: LEAVY, THOMAS and RAWLINSON, Circuit Judges

The panel has voted to deny appellants' petition for panel rehearing. Judges Thomas and Rawlinson have voted to deny the petition for rehearing en banc, and Judge Leavy so recommends.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

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U.S. Constitution

AMENDMENT I – FREEDOM OF RELIGION, SPEECH AND PRESS; PEACEFUL, ASSEMBLAGE; PETITION OF GRIEVANCES

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT XIV – CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Materials for the Citizenship and Privileges and Immunities Clauses of Section 1 are set out in this volume. See the following three volumes for materials pertaining to the Due Process and Equal Protection Clauses of that section and Sections 2 to 5.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * *

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42 U.S.C. § 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

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42 U.S.C. § 1985. Conspiracy to interfere with civil rights

(1) Preventing officer from performing duties

If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest,

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interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire, or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges

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and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States, or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation against any one or more of the conspirators.

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42 U.S.C. § 1986. Action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed shall be liable to the party injured, or

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his legal representatives for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding five thousand dollars damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

---

42 U.S.C. § 1988. Proceedings in vindication of civil rights.

(b) Attorney's fees

In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 [20 U.S.C.A. § 1681 et seq.], the Religious Freedom Restoration Act of 1998 [42 U.S.C.A. § 2000bb et seq.], the Religious Land Use and Institutionalized Persons Act of 2000 [42 U.S.C.A. § 2000cc et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C.A. § 2000d et seq.], or section 13981 of this title, the court, in its discretion, may allow the prevailing

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party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

KOREEN MORGAN, et al.,
Plaintiffs,
v.
JAMES L. MASON, et al.,
Defendants.
_____/

CIV. NO. 98-0383-E-EJG/PAN

ORDER DENYING DEFENDANTS' REQUEST FOR ADDITIONAL TIME TO FILE AN ANSWER

(Filed Sep. 3, 1999)

The court is in receipt of defendants Pro Indiviso, Inc., Scona, Inc., Alva A. Harris, Grant E. Hann, Kent E. Carlson, Carolee C. Carlson, and Evelyn C. Harris' request for an order granting them additional time in which to file their answer. Because defendants have filed this request *after* their answer was due, defendants' request is DENIED.

IT IS SO ORDERED.

Dated: September 1, 1999

/s/ Edward J. Garcia
EDWARD J. GARCIA, JUDGE
UNITED STATES DISTRICT COURT

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Supreme Court, U.S.
FILED
DEC 26 2001
CLERK

No. 01-773

In The

Supreme Court of the United States

JOHN N. BACH, J.D. RITCHIE and ELAINE RITCHIE,

Petitioners,

vs.

UNITED STATES OF AMERICA, INTERNAL REVENUE SERVICE, JAMES MASON, CINDY MASON, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. DID THE UNITED STATES DISTRICT COURT ABUSE ITS DISCRETION BY DISMISSING PETITIONERS' AMENDED COMPLAINT WITH PREJUDICE FOR FAILURE TO COMPLY WITH F.R.C.P. 8?

2. DID THE UNITED STATES DISTRICT COURT ERR IN FINDING AS AN ADDITIONAL BASIS OF DISMISSAL WITH PREJUDICE THAT PETITIONERS' AMENDED COMPLAINT DID NOT MEET THE REQUIREMENTS OF F.R.C.P. 12(b)(6)?

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STATEMENT OF THE CASE

NATURE OF THE CASE

This action began on September 30, 1998, when a dozen or more plaintiffs (petitioners) in various capacities sued 113 defendants alleging conspiracy and deprivation of their constitutional rights. Those named as defendant included government agencies who had been previously involved in cases in which the petitioners were parties. On June 1, 1999, the United States District Court entered an Order Dismissing Complaint with Leave to Amend, dismissing petitioners' complaint, without prejudice, for failure to comply with F.R.C.P. 8. Among other things, the District Court found that the complaint lacked specificity. In the Order, the District Court set forth some basic pleading requirements for an amended complaint, including: 1) specifying which defendants were liable for which claims; 2) separating their claims so that only one claim was pled under each heading; 3) pleading only facts which are relevant to their claims; 4) identifying which facts support which claims; and 5) making adjustments to the original complaint in light of the arguments raised in some of the defendants' motions to dismiss. (App. 12). The District Court granted petitioners thirty days leave to amend their original complaint and warned that failure to amend the complaint in compliance with Rule 8 may result in dismissal with prejudice.

COURSE OF PROCEEDINGS BELOW

On June 21, 1999, the District Court granted petitioners, at their request, a thirty day extension of time in

which to file their amended complaint. Petitioners filed their amended complaint on August 2, 1999. Respondent Jared Harris filed his Answer to Amended Complaint and Demand for Jury Trial and Motion to Dismiss and/or Motion for Summary Judgment on August 13, 1999. (App. 1). On October 21, 1999, following the filing of motions to dismiss by various respondents, the District Court entered its Order of Dismissal, dismissing petitioners' amended complaint with prejudice as to all defendants/respondents. (App. 17). The petition for certiorari to this Court follows the Ninth Circuit's affirmation of the United States District Court decision by Judge Edward J. Garcia. (App. 42).

The claims in question had their genesis in State Court. The salient facts are actually set forth in two reported decisions of the Idaho Supreme Court, namely *Pro Indiviso, Inc. v. Mid-Mile Holding Trust*, 131 Idaho 741, 963 P.2d 1178 (1998), App. 43, and *Bowles v. Pro Indiviso, Inc.*, 132 Idaho 371, 973 P.2d 142 (1999), App. 55. Respondent Jared Harris acted as defense counsel at the trial court level (not on appeal) in the *Bowles* case and his involvement was limited to approximately nine (9) months. Jared Harris is not, as alleged in the Amended Complaint filed in this matter, an owner or principal in Pro Indiviso, Inc. or Scona, Inc.

Dean and Betty Bowles owed money to the United States for failure to pay income taxes. In July 1993, Dean and Betty filed a deed in which they conveyed title to their real property to Mid-Mile Holding Trust (Mid-Mile). On March 1, 1994, the Internal Revenue Service (I.R.S.) filed a lien on the property for unpaid taxes. The lien named Mid-Mile as nominee of Dean and Betty Bowles. A

tax sale was held in June 1995, at which Pro Indiviso purchased the property for $32,100. The I.R.S. issued Pro Indiviso a certificate of sale. After the period of redemption had expired, Pro Indiviso received a deed from the I.R.S. which it recorded on December 14, 1995.

On March 12, 1996, Pro Indiviso filed a verified complaint in State Court (7th Judicial District in and for the County of Bonneville) against Mid-Mile as nominee of Dean and Betty Bowles seeking ejectment, a writ of assistance and damages. Mid-Mile was never served, but Dean and Betty Bowles were served and Betty Bowles entered a general appearance by filing a "Motion to Dismiss Due to Fraud of Internal Revenue Service, etc." On April 5, 1996, Pro Indiviso filed a motion for a writ of assistance and scheduled a hearing on all pending motions.

A hearing was held on May 13, 1996. The district court treated Pro Indiviso's motion for a writ of assistance as a motion for partial summary judgment. The court granted the motion holding that Pro Indiviso had submitted a verified complaint that it held a recorded deed to the property, and that Dean and Betty Bowles had produced no admissible evidence or affidavits to dispute this fact.

Following the hearing, Dean and Betty Bowles filed a "Judicial Notice of Objection to Hearing, etc.," along with other motions. The court denied the motions because they simply restated the previous "Motion to Dismiss Due to Fraud of Internal Revenue Service, etc." and contained no affidavits or admissible evidence. Not to be dissuaded, Dean and Betty Bowles continued to file motions including a renewed motion to dismiss due to I.R.S. fraud. A

hearing was held on the motions which was attended by Dean and Betty Bowles and counsel for Pro Indiviso. In a memorandum decision and order, the court denied the Bowles' motions including a motion to dismiss for lack of subject matter jurisdiction because the trial court reasoned that Idaho courts did have jurisdiction to determine right of possession and to issue a writ of assistance.

Finally, the trial court denied the renewed motion to dismiss based on fraud. The court ruled that none of the cases cited applied to these facts and that if Dean and Betty Bowles wanted to attack the lien and sale they would have to do so through an administrative hearing or by filing suit against the I.R.S. in federal district court.

On August 7, 1996, Dean and Betty Bowles filed a notice of appeal to the Idaho Supreme Court which was dismissed because there was no final judgment in the action. On September 6, 1996, Dean and Betty filed an answer to the original complaint filed in March. On January 13, 1997, a final pre-trial conference was held and because no representative of Pro-Indiviso attended the conference, the trial court dismissed, without prejudice, all of Pro Indiviso's remaining claims. Another hearing was held on January 28, 1997 to hear other motions filed by the Bowles. On February 10, the trial court issued a memorandum decision and order in which it granted the motion to vacate the trial date and denied all of the other motions because, following the dismissal of Pro Indiviso's remaining claims, there were no claims pending before the court.

Another notice of appeal was filed on March 24, 1997 which was conditionally dismissed due to lack of a final judgment. The district court then issued a final judgment

on July 22, 1997 and the Idaho Supreme Court reinstated the appeal. On appeal, Dean and Betty Bowles claimed that the district court erred in granting partial summary judgment in favor of Pro Indiviso on its motion for a writ of assistance because (1) Pro Indiviso did not specifically identify in its complaint a statutory basis for bringing its action, (2) the I.R.S. did not follow its own regulations in conducting the sale, and (3) the district court failed to look behind the deed obtained by Pro Indiviso to determine its validity. Dean and Betty Bowles also argued that Pro Indiviso did not have standing to bring an action for ejectment because it had not previously quieted title in the property.

On August 28, 1998, the Idaho Supreme Court affirmed the district court's grant of the writ of assistance and awarded costs and fees on appeal to Pro-Indiviso, Inc. because it determined that Dean and Betty Bowles had raised the same issues and arguments which were raised before the district court, that most of their motions were incomprehensible and lacked any basis in law and that the repeated filing of these motions, and the arguments in support on appeal, were found to be frivolous and unreasonable. *Pro Indiviso, Inc. v. Mid-Mile Holding Trust*, 131 Idaho 741, 963 P.2d 1178 (1998), App. 43.

In January 1997, at about the same time the litigation before the trial court was ending in the Pro-Indiviso lawsuit, Mid-Mile, Eileen Hancock, as trustee for Mid-Mile, and the Bowles filed their own complaint in which they sought to quiet title to the subject property. In June 1997, pursuant to court order, the Bowles filed an amended complaint against Pro Indiviso, Kent E. Carlson, Carolee Carlson, Alva Harris and Evelyn Harris.

Jared Harris, an Idaho attorney, was hired to represent the Carlson and the Harris defendants. In this lawsuit, the Bowles alleged that in July of 1993, by deed recorded in Bonneville County, Mid-Mile Holding Trust became the owner of the subject property in fee simple. However, despite an order of the district court requiring that a copy of the trust agreement be filed with the district court within ten days, the Bowles failed to present any admissible evidence to the district court that supported the existence of Mid-Mile Holding Trust as a lawfully created trust in Idaho. The defendants properly filed answers to the Bowles' complaints. The amended complaint stated two causes of action: quiet title, and deprivation of due process of law.

On July 2, 1997, defendant Pro Indiviso filed a motion for summary judgment and sanctions. On July 7, 1997, the other defendants represented by Jared Harris filed a motion for judgment on the pleadings. After hearing argument on the pending motions, the district court granted the motion for judgment on the pleadings as to all defendants. In its corresponding Memorandum Decision and Order, dated August 14, 1997, the district court awarded attorney fees against the Bowles in the amount of $450.00. Additionally, the court awarded $1,800.00 in attorney fees against Mid-Mile Holding Trust, and trustees Mark Miller and Eileen Hancock. Costs were also awarded against all plaintiffs. On August 29, 1997, the individual defendants filed a motion for additional attorney fees and costs. At the September 15, 1997 hearing on the pending motions, the Bowles submitted a "verified judicial notice" objecting to the payment of all attorney fees. The district court issued another Memorandum

Decision and Order on September 30, 1997, in which it awarded additional attorney fees against the Bowles in the amount of $1,392.00.

The Bowles then appealed to the Idaho Supreme Court. Alva Harris took over representation of all the defendants on appeal. On appeal, the Idaho Supreme Court affirmed the trial court and affirmed the order of the district court granting judgment on the pleadings and the order of the district court awarding costs, fees, and sanctions against the Bowles. *Bowles v. Pro Indiviso, Inc.*, 132 Idaho 371, 973 P.2d 142 (1999). (App. 55).

In October of 1998, the Bowles and others filed this action in the United States District Court for the District of Idaho naming 113 defendants. Jared Harris was one of those defendants. On June 1, 1999, the United States District Court for the District of Idaho entered an order *sua sponte* dismissing the plaintiffs' original complaint because of its lack of specificity, i.e. there was no attempt to "match up the specific factual allegations and the specific legal claim to specific defendants." (Order Dismissing Complaint With Leave to Amend, App. 12). After the District Court entered an Order on June 1, 1999 dismissing the complaint with leave to amend, some, but not all, the original plaintiffs filed an Amended Complaint naming the same 113 original defendants, including Jared Harris. Jared Harris maintained that, as to him, the Amended Complaint was equally deficient and brought a motion to dismiss pursuant to F.R.C.P. 12(b)(6) and/or, in the alternative, for summary judgment pursuant to F.R.C.P. 56. This was granted by the United States District Court for the District of Idaho in the Order of Dismissal

dated October 21, 1999. (App. 17). That decision was affirmed by the United States Court of Appeals for the Ninth Circuit in a Memorandum decision filed February 21, 2001. (App. 39). It is from that decision and the subsequent denial of their petition for rehearing before the Ninth Circuit Court of Appeals that the plaintiffs petition this Court for certiorari.

SUMMARY OF THE ARGUMENT

Plaintiffs' petition does not meet the requirements of United States Supreme Court Rule 10 because it presents no decision in conflict with another United States court of appeals on the same important matter, no important federal question that conflicts with a state court of last resort, no departure from the accepted and usual course of judicial proceedings, nor is it an important question of federal law that should be settled by this Court.

The Ninth Circuit correctly affirmed the ruling of the United States District Court that the District Court properly exercised its discretion in dismissing petitioners' amended complaint with prejudice for failure to comply with Rule 8 of the Federal Rules of Civil Procedure. Rule 8 requires the contents of pleadings to be simple, concise and direct. Petitioners' original complaint contained primarily conclusory statements which were unsupported by appropriate factual allegations. After dismissing the original complaint with instructions concerning the requirements of Rule 8 and warning of a possible dismissal with prejudice of any subsequent complaint that did not comply, the District Court granted petitioners

leave to file an amended complaint. The amended complaint was no better than the first. Because the District Court reasonably explored possible and meaningful alternatives to dismissal prior to entering its final order dismissing the complaint with prejudice, it did not abuse its discretion and the Ninth Circuit Court of Appeals properly affirmed the District Court.

In addition to the plaintiffs' non-compliance with Rule 8, defendant Jared Harris (along with defendant Richard Ward) also filed motions to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure of plaintiffs' complaint to state claims upon which relief can be granted. The analysis under 12(b)(6) involves the sufficiency of the claims of violations of RICO and United States Code Chapter 26, §§ 6331, 6343, 6343(a), 7426, and 7433; Chapter 28, § 2410; and Chapter 42, § 1983. In no instance are the allegations set forth in a sufficient manner to provide a basis for which relief might be granted against all defendants and certainly no connections shown between the vague, generalized allegations and the defendant Jared Harris, an attorney whose involvement in the matters was minimal and could not possibly be construed as in violation of certain tax or civil rights provisions. The District Court granted the 12(b)(6) motion to dismiss and this was also upheld by the Ninth Circuit Court of Appeals.

ARGUMENT

1. RULE 10 CONSIDERATIONS

Rule 10 of the Rules of the Supreme Court of the United States embellishes reasons that may convince the Court to exercise its discretion by granting a writ of certiorari, as follows:

> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;
>
> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

In the case involving Bach, et al., none of these considerations apply for granting certiorari. This Court's supervisory power need not be used because the lower court's ruling does not conflict with any United States court of appeals nor with any ruling by a state court of last resort. The lower court decision involves no important federal question and involves no departure from the

accepted and usual course of judicial. On the contrary, the lower court's actions were warranted on procedural grounds and displayed an efficacious use of judicial resources by reducing the amount of time and expense needed to resolve claims such as those brought forth by these petitioners and yet still remaining fair and just to these *pro se* claimants.

Finally, the lower court's decision does not present a federal question that has not, but should be, settled by this Court. Petitioners' claims failed on procedural grounds due to their unwillingness to comply with minimal threshold pleading requirements.

II. FAILURE TO MEET F.R.C.P. 8 REQUIREMENTS

Judge Edward J. Garcia, for the United States District Court for the District of Idaho, twice ruled that the petitioners had not met threshold requirements for a proper complaint under the Federal Rules of Civil Procedure. His first Order Dismissing Complaint with Leave to Amend (App. 12) dated May 27, 1999, allowed the plaintiffs thirty days to file an amended complaint that might comply with Rule 8(a) of the F.R.C.P., the requirement that a complaint set forth "a short and plain statement of the claim showing that the pleader is entitled to relief" and Rule 8(e) that requires averments of a pleading to be "simple, concise and direct."

Judge Garcia reviewed the amended complaint and found that cosmetic changes had been made but it still did not comply with his previous Order or Rule 8 guidelines. In his Order of Dismissal (App. 17) dated October 21, 1999, he explained: " . . . the amended complaint is as

confusing, verbose, and unintelligible as the original complaint. In addition, it still lacks the required specificity." He goes on to explain that the general tenor of the petitioners' claims appears to be the seizure of property but in no instance is there a showing of specific property seized by a particular defendant on certain dates. Therefore, there is no fair notice to the respondents by which they might defend such claims. The lack of certain dates prevents any court from determining if the claims are time-barred. The *sua sponte* ruling of dismissal with prejudice as to all defendants/respondents was proper under the circumstances as the 9th Circuit court did in *Silverton v. Department of Treasury,* 644 F.2d 1341, 1345 (9th Cir. 1981).

III. PETITIONERS' COMPLAINT FAILS TO STATE CLAIMS UPON WHICH RELIEF CAN BE GRANTED PURSUANT TO F.R.C.P. 12(b)(6)

A. Alleged RICO Violations

In paragraph 15 of their Amended Complaint, petitioners allege that two local attorneys, Jared Harris being one, through "sham and alter ego entities" Pro Indiviso, Inc. and Scona, Inc. conspired with Idaho district court judges, U.S. and IRS officials/representatives and various agencies of the State of Idaho to purchase real and personal property belonging to the plaintiffs and their spendthrift trusts. In response, Jared Harris filed an Affidavit (App. 4) and Supplemental Affidavit (App. 8) that establishes that the allegations are without foundation, i.e., that Jared Harris is not an owner, employee, director or shareholder of Pro Indiviso, Inc. or Scona, Inc., nor has

he ever represented them as an attorney. Jared Harris has never, in an individual or representative capacity, purchased an interest in the personal or real property of any of the petitioners named in the Amended Complaint (or their so-called family spendthrift trusts), nor has any entity in which he has an ownership interest done so.

Based on these allegations, petitioners allege that Jared Harris violated 18 U.S.C. §§ 1961 et seq., the Racketeer Influenced Corrupt Organizations (RICO) provisions of the Organized Crime Control Act of 1970. In *Baumer v. Pachl*, 8 F.3d 1341, 1344 (9th Cir. 1993) the Ninth Circuit discussed the allegations which are necessary for a Complaint to survive a 12(b)(6) motion directed to RICO allegations against a lawyer following the United States Supreme Court decision in *Reves v. Ernst & Young*, 507 U.S. 170, 113 S.Ct. 1163, 122 L. Ed. 2d 525 (1993):

> . . . Pachl's involvement, the preparation of two letters in September, 1982, the preparation of a partnership agreement in 1982, and assistance in a March, 1987 Chapter 7 proceeding, in which he again sent two letters, does not suffice to impute liability under *Reves*. The allegedly fraudulent scheme began in 1976 and continued until 1987; Pachl's involvement did not begin until 1982 and his role thereafter was at best sporadic. Pachl at no time held any formal position in the limited partnership. Nor did he play any part in directing the affairs of the enterprise. Pachl's role was limited to providing legal services to the limited partnership and EPA. Whether Pachl rendered his services well or poorly or improperly, is irrelevant to the *Reves* test. We are therefore compelled to conclude

that under the *Reves* "operation and management" test the complaint fails to allege a § 1962(c) cause of action as to Pachl.

Providing services that ultimately benefit the "enterprise" does not mean that one becomes liable under RICO as a result. There must be a nexus alleged between the person and the operations and management of the affairs of the alleged enterprise. *University of Maryland at Baltimore, et al. v. Peat, Marwick, Main & Co.*, 996 F.2d 1534, 1539 (3rd Cir. 1993). There must be allegations sufficient to establish (or at least infer) that the individual, by his words or actions, objectively manifested an agreement to participate, directly or indirectly, in the affairs of the alleged enterprise, through the commission of two or more predicate crimes. *United States v. Brooklier*, 685 F.2d 1208, 1222 (9th Cir. 1982), *cert. denied*, 459 U.S. 1206, 1035 S. Ct. 1194, 75 L. Ed. 2d 439 (1983). To establish a "pattern of racketeering activity," plaintiff's allegations must show both that "the racketeering predicates are related, and that they amount to or pose a threat of continued criminal activity." *H.J., Inc. v. Northwestern Bell Telephone Co.*, 492 U.S. 229, 109 S. Ct. 2893, 106 L. Ed. 2d 195 (1989). Both the "relatedness" requirement and the "continuity" requirement must be established by the pleadings. *Religious Technology Center v. Wollersheim*, 971 F.2d 364 (9th Cir. 1992).

Petitioners' Amended Complaint failed to allege facts that would show that Jared Harris was involved in the operations and management of the alleged enterprise; failed to allege facts that would show that Jared Harris agreed to participate in the affairs of the alleged enterprise through the commission of two or more predicate crimes; and failed to allege facts that would show the

existence of two or more predicate crimes that were related and pose a threat of continued criminal activity. As such, the RICO claim of the Amended Complaint was deficient. Respondent Jared Harris' role was limited to providing legal services in one isolated lawsuit for a limited period of time. There were no facts that met the "operations and management" test necessary to make out a RICO claim. Therefore, Judge Garcia's finding that plaintiffs' RICO claim should be dismissed for failure to state a claim upon which relief can be granted was proper.

B. Illegal Tax Levy Returns

26 U.S.C. § 6331 authorizes the federal government to levy upon, distrain and seize the property or property interests of taxpayers who neglect or refuse to pay taxes. 26 U.S.C. § 6343 provides the bases for releasing property which has been levied upon. 26 U.S.C. § 7426 provides that a third party (i.e., anyone "other than the person against whom is assessed the tax out of which such levy arose") may file a civil action against the United States in federal court as the remedy for a wrongful levy. Petitioners alleged that Jared Harris, among others, violated these sections. No material facts were alleged to support plaintiffs' claim or to explain how Jared Harris, a non-governmental employee, could have violated these provisions of federal law relating to certain powers of the Internal Revenue Service and identifying the method of redress for a wrongful levy by third parties.

Conclusory allegations with nothing more are insufficient to defeat an F.R.C.P. 12(b)(6) motion to dismiss for

failure to state a claim. *McCarthy v. Mayo*, 827 F.2d 1310 (9th Cir. 1987); *North Star International v. Arizona Corporation Commission*, 720 F.2d 578 (9th Cir. 1983) (complaint which is vague, conclusory, and general and does not set forth any material facts in support of the allegations was properly dismissed).

C. Failure to Release Tax Levy Allegations

26 U.S.C. § 7433 spells out the "exclusive remedy" for taxpayers damaged by the reckless or intentional disregard of any provision of Title 26 or any regulation promulgated thereunder by any officer or employee of the Internal Revenue Service. The exclusive remedy for such is a civil action for damages against the United States in a district court of the United States.

26 U.S.C. § 6343(a) provides that the Secretary shall release levies under certain circumstances. Petitioners claimed that they suffered damages because an IRS levy was not released against certain of their property or property rights. However, plaintiffs alleged no facts that would show how Jared Harris, who was and is neither an officer or employee of the Internal Revenue Service, could have violated these provisions.

D. Failure to Release Lien Allegations

26 U.S.C. § 7432 provides that a taxpayer may bring a civil action for damages against the United States in a district court of the United States where an officer or employee of the Internal Revenue Service knowingly, or by reason of negligence, fails to release a lien as provided

for in 26 U.S.C. § 6325. 28 U.S.C. § 2410 permits the United States to be named as a party in certain actions affecting property on which the United States has a lien.

Petitioners alleged that Jared Harris violated these provisions but have alleged no facts which would show how Jared Harris, who was and is neither an officer or employee of the Internal Revenue Service, could have violated these provisions.

E. Failure to Provide a Tax Refund Allegations

26 U.S.C. § 7433 spells out the "exclusive remedy" for taxpayers damaged by the reckless or intentional disregard of any provision of Title 26 or any regulation promulgated thereunder by any officer or employee of the Internal Revenue Service. Again, the exclusive remedy for such is a civil action for damages against the United States in a district court of the United States.

26 U.S.C. § 6402 provides that the Secretary shall credit overpayments to the tax liability of a taxpayer or refund the balance to the taxpayer. Presumably petitioners claimed that they suffered damages because they did not receive credit for a tax overpayment or that they did not receive a refund of an overpayment of their tax liability. However, petitioners have alleged no facts which would show how Jared Harris, who was and is neither an officer or employee of the Internal Revenue Service, could have violated these provisions. Again, conclusory allegations with nothing more are insufficient to defeat an F.R.C.P. 12(b)(6) motion to dismiss for failure to state a claim.

F. Deprivation of Constitutional Rights Allegations

Petitioners allege a violation of 42 U.S.C. §§ 1983, 1985(2), 1985(3), 1986 and 1988 based on conclusory allegations that Jared Harris deprived them of their First and Fourteenth Amendment rights, their Fifth Amendment rights, their Eighth Amendment rights, their Thirteenth Amendment rights and their Fourteenth Amendment rights. The specific allegations against Jared Harris are difficult to separate from the generalized allegations against the other one hundred plus defendants, but it appears that petitioners alleged that Jared Harris received "favorable treatment" and "specially agreed upon rulings" from Idaho state court judges.

Margolis v. Ryan, 140 F.3d 850 (9th Cir. 1998) provides some guidance in this case. Following a jury trial in state court, Margolis filed a complaint in federal district court alleging that he was denied a fair trial because the state judge had conspired with the attorneys for the party on the other side to fix the outcome of the state court litigation. The federal district court granted summary judgment against Margolis. The Ninth Circuit Court of Appeals affirmed:

> . . . Thus, a losing party in a state court proceeding cannot file an action in federal court seeking reversal of the state court decision. Id. at 292.
>
> Further, a party cannot rely merely on allegations that a state judge issued erroneous orders to support a conspiracy claim under § 1983. Rather, the party must provide material facts that show an agreement among the alleged conspirators to deprive the party of his or her

civil rights. *Hale v. Harney*, 786 F.2d 688, 690 (5th Cir. 1986); *Arsenaux v. Roberts*, 726 F.2d 1022, 1024 (5th Cir. 1982). Otherwise, any party dissatisfied with a state court decision could pursue a claim of conspiracy in federal court. See *Ellis v. Cassidy*, 625 F.2d 227, 229 (9th Cir. 1980)

> Here, the district court properly determined that appellants presented no specific facts, other than alleging Judge Ramerman made erroneous decisions, from which a conspiracy could be inferred. Appellants' federal complaint contains the conclusory allegation that Judge Ramerman joined a conspiracy with Ryan and Strong that was evidenced by the Judge granting defendant's motions, failing to consider certain papers offered by the Margolises, accepting inadmissable evidence offered by defendants, and failing to sanction Strong and Tyan for lying and asserting unsupported legal positions. Appellants did not, however, allege in their complaint, or subsequently set forth, any facts to demonstrate an agreement between Judge Ramerman and Ryan and Strong. Thus, the essence of appellants' conspiracy claim is that they litigated and lost. As such, the appellants failed to support their allegations of a conspiracy in violation of § 1983. *Ellis*, 625 F.2d at 229.

The involvement of Jared Harris was limited to defending some of the parties against whom the petitioners – herein, Dean and Betty Bowles, brought the lawsuit which is reported as *Bowles v. Pro Indiviso, Inc.*, 132 Idaho 371, 973 P.2d 142 (1999). Because Jared Harris' involvement was limited to his role as a defense counsel at the trial court level in that reported case, his liability, if

any, under 42 U.S.C. § 1983 must have arisen from those activities. The Bowles (or the other petitioners for that matter) failed to allege any facts to demonstrate any agreement between Jared Harris and the state trial judge, Judge St. Clair, (or any other federal or state official) to deprive the petitioners of their civil rights. Moreover, there were no facts alleged to support petitioners' contention that Jared Harris acted under color of state law. An attorney performing a lawyer's traditional function cannot be considered to act under color of state law. *Polk County v. Dodson*, 454 U.S. 312, 319, 102 S. Ct. 445, 70 L. Ed. 2d 509 (1981). Vague and conclusory allegations are not sufficient to support a claim for civil rights violation based on a conspiracy. *Ivey v. Board of Regents*, 673 F.2d 266, 268 (9th Cir. 1982).

Judge Garcia, in his Order of Dismissal, summarily and correctly addressed these claims as follows: First Amendment grounds, no specifications as to what the violation was and no allegations supporting their claim that their constitutionally protected right to free speech was violated; Fifth Amendment grounds, application only to federal government and federal actors; Eighth Amendment, no allegations regarding excessive bail or fines, cruel and unusual provision inapplicable because it applies only to those who have been convicted of a crime, of which there were no allegations in the complaint; Thirteenth Amendment, petitioners argued they were "slaves" because they had to pay taxes, patently frivolous; and Fourteenth Amendment, petitioners do not specify which provisions of the Fourteenth Amendment they are invoking and further have not alleged they are

members of a protected class and that they were somehow discriminated against on that basis.

CONCLUSION

Based on the foregoing, Defendant Jared Harris respectfully requests this Court deny the Petition for Writ of Certiorari, that the decision of the Ninth Circuit Court of Appeals affirming the District Court's dismissal with prejudice of all of plaintiffs' claims be affirmed in all respects.

DATED this 26th day of December, 2001.

Respectfully submitted,

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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

KOREEN MORGAN and JOHN BACH, et al., Plaintiffs, vs. FEDERAL AGENCIES AND OFFICERS, INTERNAL REVENUE SERVICES, et al., Defendants.	Case No. CIV-98-0383-E-EJG/PAN DEFENDANT JARED HARRIS' MOTION TO DISMISS AND/OR MOTION FOR SUMMARY JUDGMENT

COMES NOW Defendant Jared M. Harris, by and through his attorneys of record, Gary L. Cooper of Cooper & Larsen, and moves this Court for an Order dismissing Plaintiffs' Complaint against Jared M. Harris pursuant to Rule 8 of the Federal Rules of Civil Procedure and/or dismissing Plaintiffs' Complaint for failure to set a claim upon which relief can be granted against Jared M. Harris pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and/or granting summary judgment in favor of Jared M. Harris and against the Plaintiffs pursuant to Rule 56 of the Federal Rules of Civil Procedure

on the grounds and for the reasons that there are no genuine issues as to any material facts and defendant Jared M. Harris is entitled to judgment as a matter of law against Plaintiffs and each of them.

A memorandum of law in support of this motion and the Affidavit of Jared Harris are submitted herewith in support of the motion.

DATED this 13 day of August, 1999.

/s/ Gary L. Cooper
GARY L. COOPER

CERTIFICATE OF SERVICE

I hereby certify that on the 13 day of August, 1999, I mailed a true and correct copy of the foregoing to:

John N. Bach
1196 Sierra Madre Blvd.
San Marino, CA 91108

A. Dean Bowles and Betty Joan Bowles
12191 North 75 East
Idaho Falls, ID 83401

J.D. Ritchie and Elaine Ritchie
350 West Maple #36
Shelley, ID 83274

Detsel J. Parkinson and Earlene Parkinson
251 Ricks Avenue
Rexburg, ID 83440

Garen Hancock
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/s/ Gary L. Cooper
GARY L. COOPER

Gary L. Cooper
COOPER & LARSEN, CHARTERED
151 N. 3rd, Ste. 210
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UNITED STATES DISTRICT COURT,
DISTRICT OF IDAHO

JOHN N. BACH, A. DEAN BOWLES & BETTY JOAN BOWLES, et al., Plaintiffs, vs. UNITED STATES OF AMERICA, et al.,	)	Case No. 98-383-E-EJG **AFFIDAVIT OF JARED M. HARRIS**
STATE OF IDAHO	)	
	)	ss:
County of Bingham	)	

JARED M. HARRIS, being first duly sworn, deposes and says:

1. That I am [sic] make this affidavit of my own personal knowledge.

2. That I am a attorney licensed to practice law in the State of Idaho.

3. In my capacity as an attorney, I represented Kent E. Carlson, Carolee Carlson, Alva Harris and Evelyn Harris in a law suit filed against them by Mid Mile Holding Trust, Eileen Hancock, Trustee, Alden Dean, Bowles, Trust Manager, and Betty Joan, Bowles.

4. My representation of my clients began on February 2, 1997 and ended on October 29, 1997.

5. That I have not been involved nor at any time have I been involved with any ownership or administrative capacity for Pro Indiviso, Inc.

6. I have had no contact with any representative of the I.R.S. in connection with the Mid-Mile Holding Trust vs. Pro Indiviso, Inc. case.

7. As it relates to the case of Mid-Mile Holding Trust vs. Pro Indiviso, Inc., I had no contact with Judge St. Clair except in the Courtroom.

8. That I have read the foregoing affidavit, know the contents thereof, and that I verily believe the same to be true.

Further affiant saith not.

/s/ Jared M. Harris
JARED M. HARRIS

SUBSCRIBED AND SWORN before me this 11th day of August, 1999.

/s/ Jennifer Gillins
Notary Public for Idaho
Residing at Blackfoot
My Commission Expires
10/10/2001

[SEAL] JENNIFER GILLINS
NOTARY PUBLIC
STATE OF IDAHO

Blackfoot, Idaho
Commission Expires 10/10/2001

CERTIFICATE OF SERVICE

I hereby certify that on the 13 day of August, 1999, I mailed a true and correct copy of the foregoing to:

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Attorneys for Defendant Jared Harris

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

KOREEN MORGAN and JOE BACH, et al., Plaintiffs, vs. FEDERAL AGENCIES AND OFFICERS, INTERNAL REVENUE SERVICES, et al., Defendants.	Case No. CIV-98-0383-E-EJG/PAN **SUPPLEMENTAL AFFIDAVIT OF DEFENDANT JARED HARRIS' IN SUPPORT OF MOTION TO DISMISS AND/OR MOTION FOR SUMMARY JUDGMENT**

STATE OF IDAHO)
ss:
County of Bingham)

JARED M. HARIS, being first duly sworn upon oath, deposes and says:

1. That I am [sic] make this affidavit of my own personal knowledge.

2. That I am an attorney licensed to practice law in the State of Idaho.

3. That I have read the affidavit of J.D. Ritchie and examined the document attached to that affidavit.

4. I have never been an officer, director or shareholder of the corporation Scona, Inc. I am unable to read the name which is obscured on the form attached to the affidavit of J.D. Ritchie, but I can state with certainty that my name is not listed on the Idaho Corporation Annual Report Form which is attached to the affidavit of J.D. Ritchie.

Further affiant saith not.

/s/ Jared Harris
JARED M. HARRIS

SUBSCRIBED AND SWORN, before me this 31st day of August, 1999.

/s/ Jennifer Gillins
Notary Public for Idaho
Residing at Blackfoot
My Commission Expires
10/10/2001

[SEAL] JENNIFER GILLINS
– NOTARY PUBLIC
STATE OF IDAHO

Blackfoot, Idaho
Commission Expires 10/10/2001

CERTIFICATE OF SERVICE

I hereby certify that on the 1 day of September, 1999, I mailed a true and correct copy of the foregoing to:

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Boise, ID 83707

/s/ Gary L. Cooper
GARY L. COOPER

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

KOREEN MORGAN, et al.,

Plaintiffs,

v.

JAMES L. MASON, et al.,

Defendants.

_____/

CIV. NO. 98-0383-E-EJG/PAN

ORDER DISMISSING COMPLAINT WITH LEAVE TO AMEND

This matter is before the court on numerous defendants' motions to dismiss. However, a review of the complaint in this action has caused the court to *sua sponte* issue this order. For the reasons stated below, the complaint is dismissed with leave to amend pursuant to Rule 8 of the Federal Rules of Civil Procedure.

DISCUSSION

Rule 8(a) of the Federal Rules of Civil Procedure requires a complaint to set forth "a short and plain statement of the claim showing that the pleader is entitled to relief." Rule 8(e) requires that each averment of a pleading be "simple, concise and direct." These rules are designed to give the defendant "fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Conley v. Gibson*, 355 U.S. 41, 47 (1957). A complaint which fails to comply with Rules 8(a) and 8(e) can be dismissed *sua sponte* by a court. *See McHenry v. Renne*, 84 F.3d 1172 (9th Cir. 1996); *see also Nevijel v. North Coast Life Ins. Co.*, 651 F.2d 671 (9th Cir. 1981) (affirming a district court's

dismissal of a complaint with prejudice for failure to comply with Rules 8(a) and 8(e)).

Plaintiffs' complaint in the instant action fails under the standards of Rule 8. The complaint, brought by 13 plaintiffs, is 47 pages long with an additional 19 pages of exhibits. It contains 69 paragraphs and alleges numerous causes of action against 113 named defendants and 200 doe defendants. Broadly construed, it appears to allege a conspiracy between the IRS, City and County law enforcement, City and County prosecutors, City and County executives, and County and Federal judges to deprive plaintiffs of their constitutional rights. The complaint is verbose, convoluted and extremely difficult to comprehend. In addition, many of the allegations are irrelevant or stated in a conclusory fashion.

The complaint's major flaw, however, is its lack of specificity. No attempt is made to match up the specific factual allegations and the specific legal claims to specific defendants. In other words, the complaint does not state which defendants are liable on which of the claims. Instead, each claims says "defendants" ' conduct violated various rights of plaintiffs, without saying which defendants. However, some of the claims cannot be pled against *all* of the defendants. For example, plaintiffs' 42 U.S.C. § 1983 claims can only be brought against individuals acting under color of state law and not against individuals acting under color of federal law. *See Billings v. United States*, 57 F.3d 797, 801 (9th Cir. 1995). Thus, plaintiffs incorrectly allege § 1983 claims against the Internal Revenue Service defendants which plaintiffs contend acted under color of federal law. Other such examples exist in the complaint.

In addition to the complaint's lack of specificity in regards to the defendants, the complaint contains hardly any dates. Specific time frames are seldom alleged making it difficult for the court to determine whether the applicable statutes of limitations have run.

The court is cognizant of the fact that the plaintiffs are acting in *pro per.*[1] However, although liberally construed, *pro per* pleadings "must meet some minimum threshold in providing a defendant with notice of what it is that it allegedly did wrong." *Brazil v. United States Dept. of Navy,* 66 F.3d 193, 199 (9th Cir. 1995). Here, defendants have not been given fair notice of the claims against them.[2]

Although the court cannot rewrite plaintiffs' deficient complaint, the court will set forth some basic pleading requirements that plaintiffs must adhere to when drafting their amended complaint. First, plaintiffs must specify which defendants are liable for which claims. Some of the claims cannot be pled against all of the defendants. Second, plaintiffs must separate their claims so that only *one* claim is pled under each heading. As an example, on page 37 of the complaint the heading reads "Violations of 42 U.S.C. § 1983." Under this heading, it is alleged that defendants violated the First through Eighth and Thirteenth through Fourteenth Amendments. This is

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[1] However, the court notes that one of the plaintiffs, John Bach, is a former attorney. (Complaint at ¶ 38(c).)

[2] For instance, the IRS defendants note in their motion to dismiss that "[i]t is not clear from the Complaint which IRS defendants took actions against which plaintiffs." (IRS Defendants' Motion to Dismiss at 3.)

really ten separate claims and should be pled as such. *See* Fed. R. Civ. P. 10(b) (requiring each claim founded upon a separate transaction or occurrence to be stated in a separate count).

Third, plaintiffs need only plead facts which are relevant to their various claims. Moreover, plaintiffs must identify which of those facts support which of their claims. Lastly, the court is in receipt of numerous defendants' motions to dismiss. Although the court declines to decide those motions at this time,[3] it notes that some of defendants' arguments appear to be meritorious. Thus, plaintiffs are encouraged to review the various defendants' motions and to make the appropriate adjustments to their amended complaint.

In that regard, the plaintiffs are also directed to read Rule 11 of the Federal Rules of Civil Procedure. Rule 11, which authorizes the court to impose sanctions when a complaint is frivolous, legally unreasonable, without factual foundation, or is brought for an improper purpose, explicitly applies to parties not represented by attorneys. *See Warren v. Guelker,* 29 F.3d 1386, 1390 (9th Cir. 1994).

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[3] Most of the defendants have moved to dismiss the complaint pursuant to Rule 4(m) of the Federal Rules of Civil Procedure. This rule provides that service must be made upon defendants within 120 days of the filing of the complaint. In determining whether to exercise its discretion to dismiss the complaint under this rule, the court must consider various factors such as whether the statute of limitations has run. Because plaintiffs' complaint is so poorly drafted, the court is unable to make those determinations at this time. However, defendants may renew their motions after the amended complaint is filed.

CONCLUSION

Based on the foregoing and pursuant to Rule 8 of the Federal Rules of Civil Procedure, the court dismisses plaintiffs' complaint with leave to amend. Plaintiffs are given thirty days leave to amend from the filing date of this order. **Failure to timely amend will convert this dismissal to one with prejudice.** Plaintiffs are also admonished that failure to amend so as to comply with Rule 8 may also result in dismissal with prejudice. *See Nevijel v. North Coast Life Ins. Co.*, 651 F.2d 671 (9th Cir. 1981).

In the event plaintiffs timely amend, *all* defendants (including the ones that have already answered or filed motions) shall answer or otherwise respond within twenty days after service of the amended complaint. To the extent the defendants' responses to plaintiffs' amended complaint will be identical to their responses to the initial complaint, the defendants may refile the same answers or motions.

IT IS SO ORDERED.

Dated: May 27, 1999

/s/ Edward J. Garcia
EDWARD J. GARCIA, JUDGE
UNITED STATES
DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

JOHN N. BACH, et al.,
Plaintiffs,

v.

JAMES L. MASON, et al.,
Defendants.
_____/

CIV. NO. 98-0383-E-EJG/PAN

ORDER OF DISMISSAL

This matter is before the court on various motions. Specifically, the following defense motions have been made: (1) the IRS defendants[1] and defendant Richard Wards' motion to dismiss; (2) the Bonneville County defendants,[2] the Jefferson County defendants,[3] the Madison County defendants,[4] defendant David Sasser, and

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[1] The IRS defendants consist of James Mason, Cindy Mason, Phylis Gugin, Mark Davis, Al Seefried, Cheryl Mosby, Kay Mosher, Hester Pulling, Keith Farrer, Jack Cheskaty, Gerald Heschell, Richard Owens, Steve Hines, Donald Jensen, Pam Bigelow, Sid Beckstead, Clive London, Merry Trudeau, and Randy Harper.

[2] The Bonneville County defendants consist of Bonneville County, Bonneville County Sheriff Byron Stommel, Kay Cortez, Gina Dixon, Charlotte Munns, Paul Wild, Glenn Huderman, Bonneville County Clerk Ron Longmore, and Bonneville County Assessor P. Blake Mueller.

[3] The Jefferson County defendants consist of Jefferson County, Jefferson County Recorder Connie Keller, Jefferson County Sheriff Blair Olsen and Stephen Clark.

[4] The Madison County defendants consist of Madison County, Madison County Recorder Beth Reese, Madison County Assessor Lyle Saurey, Madison County Sheriff Greg Moffatt,

Hamlin & Sassers' motion to dismiss and/or quash service; (3) defendant Jared Harris' motion to dismiss and/or motion for summary judgment; and (4) the federal judges[5] and United States Attorney Betty Richardsons' motion to dismiss. In addition, plaintiffs have filed various motions. After carefully reviewing the complaints and the documents submitted in connection with the motions, the court has determined that the motions are appropriate for resolution without oral argument. Accordingly, the motions are ordered submitted. For the reasons set forth below, plaintiffs' amended complaint is dismissed with prejudice.

BACKGROUND

On September 30, 1998, plaintiffs in *pro per* filed this action in the District of Idaho. Broadly construed, the complaint appeared to allege a grand conspiracy among various city, county, state, and federal officials, as well as private parties, to deprive plaintiffs of their constitutional rights. More specifically, the plaintiffs alleged that the IRS wrongfully seized and sold their properties in violation of the Tax Code and that law enforcement and the courts ignored their obligations to protect plaintiffs' rights. Since the complaint named each district judge and magistrate judge in the District of Idaho as defendants, the case

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Madison County Prosecutor Sid Brown, and Madison County employees Terry Bair and Kip Manwaring.

[5] The federal judges consist of United States District Judge Edward J. Lodge, United States District Judge B. Lynn Winmill, United States Magistrate Judge Mikel H. Williams, and United States Magistrate Judge Larry M. Boyle.

was reassigned to the undersigned of the Eastern District of California.

Thereafter, this court allowed six of the plaintiffs to withdraw from the action. By this time, many of the defendants had filed motions to dismiss. Nevertheless, on June 1, 1999, the court issued an order in which it *sua sponte* dismissed plaintiffs' complaint, without prejudice, for failure to comply with Rule 8 of the Federal Rules of Civil Procedure. On June 15, 1999, the plaintiffs sought and were granted a thirty day extension of time in which to file their amended complaint. Plaintiffs' amended complaint was then filed on August 2, 1999.[6] In response, the above listed motions were filed and the court now issues the following order.

DISCUSSION

A. Federal Rule of Civil Procedure 8

On June 1, 1999, this court issued an order in which it *sua sponte* dismissed plaintiffs' complaint, with leave to amend, for failure to comply with Rule 8 of the Federal Rules of Civil Procedure. In that order, the court specifically listed the complaint's major flaws and then set forth some basic pleading requirements for plaintiffs to adhere to when they drafted their amended complaint. The court cautioned plaintiffs that failure to amend so as

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[6] The order granting plaintiffs an extension of time to file their amended complaint stated that the complaint needed to be filed with the court by August 1, 1999. However, since August 1 was a Sunday, plaintiffs properly filed their complaint on Monday, August 2.

to comply with Rule 8 could result in dismissal with prejudice. After receiving a thirty day extension, plaintiffs filed their amended complaint on August 2, 1999.

Now, the IRS defendants, defendant Richard Ward, the federal judges, and United States Attorney Betty Richardson move to dismiss the amended complaint pursuant to Rule 8. A complaint which fails to comply with Rule 8 may be dismissed with prejudice pursuant to Rule 41(b). *See Nevijel v. North Coast Life Ins. Co.*, 651 F.2d 671, 673 (9th Cir. 1981). Rule 41(b) provides in part that a defendant may move for dismissal of an action if a plaintiff fails to comply with the Federal Rules of Civil Procedure or an order of the court.

Although plaintiffs in the instant action have made cosmetic changes to their complaint, it still does not comply with either Rule 8 or this court's previous order. In fact, the amended complaint is as confusing, verbose, and unintelligible as the original complaint. In addition, it still lacks the required specificity. For example, plaintiffs' principal allegations regard the seizure of their properties. Yet plaintiffs do not make clear exactly which properties were seized, exactly which defendants seized these properties, and exactly when these seizures occurred. Conclusory allegations do not give the defendants fair notice of what the plaintiffs' claims are and the grounds upon which they rest. *See Conley v. Gibson*, 355 U.S. 41, 47 (1957).

Moreover, it appears that plaintiffs have all but ignored this court's pleading suggestions. For instance, in the order this court stated that "plaintiffs must specify which defendants are liable for which claims. Some of the

claims cannot be pled against all of the defendants." Despite this admonition, plaintiffs have attempted yet again to bring most of the federal claims against all of the defendants. As discussed more fully below, this is improper. Also in the order, the court noted that "the complaint contains hardly any dates." Plaintiffs have not corrected this flaw in the amended complaint thus making it difficult for the court to determine whether their complaint is time-barred. Lastly, despite being told to do so, plaintiffs have failed to specify which facts support which of their claims.

Before dismissing an action under Rule 41(b), however, a district court should first attempt other less drastic alternatives. *See Nevijel*, 651 F.2d at 674. "These less drastic alternatives [can] include allowing further amended complaints, allowing additional time, or insisting that [the party] associate experienced counsel." *Id.* This court has tried less drastic alternatives in this case to no avail. First, the court allowed plaintiffs to amend their complaint after giving them explicit drafting instructions. Second, the court granted plaintiffs a thirty day extension of time in which to file their amended complaint. Lastly, the court directed the plaintiffs to read Rule 11 of the Federal Rules of Civil Procedure and noted that Rule 11's sanction provision applies to parties in *pro per.* Despite this warning, plaintiffs have not indicated to the court that they wish to hire an attorney. Accordingly, the court finds that dismissal of this action under Rule 41(b) with prejudice is appropriate.

Again, the court recognizes that the plaintiffs are proceeding without legal counsel. However, "[p]ro se litigants must follow the same rules of procedure that

govern other litigants." *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987). In addition, the lead plaintiff in this case, John Bach, is a former attorney. He is therefore presumably capable of drafting a comprehensible and legally sufficient complaint setting forth plaintiffs' claims.

For the above reasons, the IRS defendants, defendant Richard Ward, the federal judges, and United States Attorney Betty Richardsons' motion to dismiss pursuant to Rule 8 is granted with prejudice. The action is also dismissed with prejudice as to all defendants on this basis. *See Silverton v. Department of Treasury*, 644 F.2d 1341, 1345 (9th Cir. 1981) (*sua sponte* dismissal of action against non-moving defendants is appropriate where "such defendants are in a position similar to that of moving defendants or where claims against such defendants are integrally related").

Although this ruling disposes of the entire action, some of the defendants have moved to dismiss plaintiffs' complaint on other grounds. As discussed below, these grounds provide alternative reasons for dismissing plaintiffs' complaint.

B. Federal Rule of Civil Procedure 4(m)

A Rule 12(b)(5) motion to dismiss for insufficiency of service of process has been made in all of the defense motions except for Jared Harris'. Specifically, these defense motions contend that plaintiffs have failed to comply with Rule 4(m) of the Federal Rules of Civil Procedure.

Rule 4(m) requires dismissal without prejudice when a defendant is not served with a copy of the summons and complaint within 120 days after the filing of the complaint. Here, plaintiffs filed their original complaint on September 30, 1998. Thus, the 120 day period would have expired on January 28, 1999. The moving defendants have submitted affidavits which demonstrate that none of them were served within the 120 day period required by Rule 4(m).[7]

Nevertheless, Rule 4(m) requires a court to extend the time for service for an appropriate period if the plaintiffs show good cause for the failure to effect timely service. If good cause is not shown, it is discretionary with the court whether to grant an extension or whether to dismiss the action without prejudice. In this case, plaintiffs have not explained their failure to effect timely service of the original complaint. In fact, plaintiffs have also failed to timely serve all of the defendants with a copy of the amended complaint.

Therefore, the court could dismiss this action against the moving defendants without prejudice pursuant to Rule 4(m). However, the court has already concluded that dismissal of this action against all defendants should be with prejudice for plaintiffs' failure to comply with Rule 8. This resolution makes it unnecessary for the court to dismiss the action without prejudice per Rule 4(m) or to decide the other service of process motions that defendants have filed.

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[7] The court also notes that there are many other defendants in this case which have not been timely served or have never been served.

C. Federal Rule of Civil Procedure 12(b)(6)

Next, the IRS defendants, defendant Richard Ward, and defendant Jared Harris have filed various motions to dismiss pursuant to Rule 12(b)(6) for failure of plaintiffs' complaint to state claims upon which relief can be granted. The sufficiency of each of the federal claims will be briefly discussed below.

1. RICO Claim

Plaintiffs first allege that defendants have violated the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. § 1961 *et seq.* To state a claim under RICO plaintiffs must demonstrate: (1) the conduct (2) of an enterprise (3) through a pattern (4) of racketeering activity. *See Sun Savings and Loan Association v. Dierdorff,* 825 F.2d 187, 191 (9th Cir. 1987). In addition, plaintiffs must allege a causal connection between the pattern and the injury to the plaintiffs. *See Grimmett v. Brown,* 75 F.3d 506, 510 (9th Cir. 1996).

In the amended complaint, plaintiffs make the following allegations regarding RICO:

> All of said defendants and each of them, have engaged, participated and conduct, and continue this date to so conduct themselves, having committed more than two (2) predicate acts involving interstate commerce, so as to violated, jointly and severally, in multi-layers of illegal and corrupt activities and pursuits, the Federal R.I.C.O. Act, 18 U.S.C. §§ 1961-1968. (*See* Amended Compl. ¶ 28.)

These general and conclusory allegations fail to state a RICO claim. These statements fail to identify the actions of each defendant or to allege the predicate acts necessary to allege a pattern of racketeering activities with the requisite specificity. Accordingly, plaintiffs' RICO claim is dismissed for failure to state a claim upon which relief can be granted.

2. 26 U.S.C. §§ 6331, 6343, and 7426

Next, plaintiffs allege that some of the defendants have violated 26 U.S.C. §§ 6331, 6343, and 7426. Section 6331 authorizes the federal government to levy upon, distrain, and seize the property or property interests of taxpayers who neglect or refuse to pay taxes. Section 6343 provides the basis for releasing property which has been levied upon. Neither section provides for a right of action.

Section 7426 provides that a third party may file a civil action against the United States in federal court as the remedy for a wrongful levy. This section is not applicable here because first the United States is not a named defendant and second the plaintiffs are the taxpayers levied upon and not third parties. (*See* Amended Compl. ¶¶ 18-19.) Thus, these claims are also dismissed.

3. 226 U.S.C. §§ 7433 and 6343(a)

Plaintiffs also allege that 26 U.S.C. §§ 7433 and 6343(a) were violated. Section 7433 authorizes taxpayers to bring a civil action for damages against the United States for certain unauthorized collection actions. The

only authorized defendant under this code section, however, is the United States. Since the United States is not a named defendant in this action and since plaintiffs cannot bring an action under this section against the other defendants, this claim must be dismissed. Plaintiffs' allegations under section 6343 have already been discussed and dismissed above.

4. 26 U.S.C. § 7432 and 28 U.S.C. § 2410

Plaintiffs allege next that 26 U.S.C. § 7432[8] and 28 U.S.C. § 2410 were violated. Section 7432 of Title 26 authorizes civil damages for failure of an officer or employee of the IRS to release a lien. Section 2410 of Title 28 permits the United States to be named as a party in certain actions affecting property on which the United States has a lien. Only the United States can be sued under these two code sections. Since the United States is not a named defendant in this action, these claims must be dismissed.

5. 42 U.S.C. § 1983

Plaintiffs have alleged numerous claims pursuant to 42 U.S.C. § 1983. However, plaintiffs improperly attempt to bring these claims against *all* of the defendants. As noted in the court's previous order, claims under 42 U.S.C. § 1983 can only be brought against individuals

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[8] The code section plaintiffs cite, 28 U.S.C. § 7432, does not exist so the court assumes that plaintiffs meant to cite 26 U.S.C. § 7432.

acting under color of state law. *See Billings v. United States*, 57 F.3d 797, 801 (9th Cir. 1995). Accordingly, plaintiffs' § 1983 claims must be dismissed to the extent that they are brought against individuals acting under color of federal law or non-governmental individuals.

With that in mind, the court now turns to plaintiffs' various § 1983 claims.

a. First Amendment

Plaintiffs allege in a conclusory fashion that their rights as established by the First Amendment were violated. Plaintiffs do not specify what the First Amendment violation is or the facts supporting it. Since plaintiffs make no allegations supporting their claim that their constitutionally protected right to free speech was violated, this claim is dismissed.

b. Fifth Amendment

Next, plaintiffs allege, pursuant to 42 U.S.C. § 1983, that *all* of the defendants violated their rights under the Fifth Amendment. However, the Fifth Amendment applies to and restricts only the federal government and federal actors. *See Geneva Towers Tenants Organization v. Federated Mortgage Investors*, 504 F.2d 483, 487 (9th Cir. 1974). As noted above, claims under 42 U.S.C. § 1983 cannot be brought against individuals acting under color of federal law. Thus, the Fifth Amendment allegations are improper and are accordingly dismissed.

c. Eighth Amendment

An allegation that defendants violated the Eighth Amendment is pled next. The Eighth Amendment provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Plaintiffs do not specify which clause of the Eighth Amendment they invoke. Although there is an allegation that some of the plaintiffs were arrested, there are no allegations regarding bail or fines. In addition, the cruel and unusual provision is inapplicable here because it applies only to those who have been convicted of a crime. *See City of Revere v. Massachusetts General Hospital*, 463 U.S. 239, 243-44 (1983). There are no allegations that any of the plaintiffs were ever convicted of a crime.

d. Thirteenth Amendment

Plaintiffs also allege that defendants violated the Thirteenth Amendment, the Amendment which abolished slavery and involuntary servitude. Plaintiffs appear to be arguing that they are "slaves" because they have to pay income taxes. That is patently frivolous. First, the Sixteenth Amendment to the Constitution gives Congress the power "to lay and collect taxes on incomes." Second, the Ninth Circuit has already considered and rejected such arguments. *See, e.g., Kasey v. Commissioner of Internal Revenue*, 457 F.2d 369, 370 (9th Cir. 1972). Accordingly, plaintiffs' claims under the Thirteenth Amendment are dismissed.

e. Fourteenth Amendment

Plaintiffs' last 42 U.S.C. § 1983 claim involves the Fourteenth Amendment. Again, as with previous claims, plaintiffs do not specify which provisions of the Fourteenth Amendment they are invoking. Accordingly, they have failed to state a claim upon which relief can be granted under the Fourteenth Amendment. Nevertheless, to the extent plaintiffs are purporting to bring a claim under the equal protection clause, they fail. "To state a claim under 42 U.S.C. § 1983 for a violation of the Equal Protection Clause of the Fourteenth Amendment a plaintiff must show that the defendants acted with an intent or purpose to discriminate against the plaintiff based upon membership in a protected class." *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998). Plaintiffs have not alleged that they are members in a protected class and have not alleged any information in which that can be inferred.

6. 42 U.S.C. § 1985(2)

Next, plaintiffs allege that defendants violated 42 U.S.C. § 1985(2). "Section 1985(2) contains two clauses that give rise to separate causes of action." *See Portman v. County of Santa Clara*, 995 F.2d 898, 908 (9th Cir. 1993). The first clause concerns access to federal courts. *Id.* at 909. Although plaintiffs contend that they were denied access to this court, they provide no factual allegations to support that statement. The second clause concerns access to state or territorial courts. *Id.* However, "the second clause of section 1985(2) [requires] an allegation of class-based

animus for the statement of a claim under that clause." *Id.* Here, plaintiffs have not alleged that they were denied access to any state courts because they are members of a protected class. Overall, plaintiffs have no claims under 42 U.S.C. § 1985(2).

7. 42 U.S.C. § 1985(3)

Plaintiffs also allege that defendants violated 42 U.S.C. § 1985(3). To properly plead a claim under § 1985(3), a complaint must have sufficient allegations that defendants' conduct was motivated by a racial or otherwise class-based, invidiously discriminatory animus. *Trerice v. Pedersen*, 769 F.2d 1398, 1402 (9th Cir. 1985). "Such animus constitutes an essential element of a cause of action under section 1985(3)." *Id.*

Here, plaintiffs' complaint does not allege the requisite animus, nor does it contain any factual allegations from which a race or class-based animus can be inferred. Because the complaint does not contain the necessary allegations, the 42 U.S.C. § 1985(3) claim is unsupportable and is hereby dismissed.

8. 42 U.S.C. §§ 1986 and 1988

Plaintiffs' next to last federal claims are brought pursuant to 42 U.S.C. §§ 1986 and 1988. First, as to plaintiffs' claim under § 1986, the Ninth Circuit has adopted the broadly accepted principle that a cause of action is not provided under 42 U.S.C. § 1986 absent a valid claim for relief under § 1985. *Trerice*, 769 F.2d at 1403. Accordingly,

plaintiffs' § 1986 claim must be dismissed since their § 1985 claims were dismissed.

Second, section 1988 of Title 42 of the United States Code provides that in certain civil rights actions the district court may, in its discretion, award the prevailing party reasonable attorneys' fees. Section 1988, however, does not provide an independent cause of action for civil rights violations. *See Brower v. Invo County*, 817 F.2d 540, 546 (9th Cir. 1987), rev'd on other grounds, 489 U.S. 593 (1989). Thus, plaintiffs have failed to state a claim under § 1988.

9. 26 U.S.C. §§ 6402 and 7433

Lastly, plaintiffs allege 26 U.S.C. §§ 6402 and 7433 were violated. Section 6402 deals with credits and refunds. Plaintiffs do not clarify the nature of their claims under § 6402. Nevertheless, § 6402(f) provides that "[n]o court of the United States shall have jurisdiction to hear any action, whether legal or equitable, brought to restrain or review a reduction authorized by subsection (c), (d), or (e)." Therefore, to the extent the plaintiffs are asking this court to restrain or review a reduction, this court lacks jurisdiction. As for plaintiffs' allegations under section 7433, they have already been discussed and dismissed above.

D. Plaintiffs' Motions

In addition to the above defense motions, the court has under submission various motions filed by the plaintiffs. First, plaintiffs have moved for entry of default

judgment against defendants Pro Indiviso, Inc., Scona Inc., Alva Harris, Jared Harris, Evelyn Harris, Kent Carlson, Grant Hann, and Darrell Harris. Second, plaintiffs request that the court sanction these defendants and strike their answers and motions for summary judgment. Lastly, plaintiffs seek a permanent injunction to restrain these defendants from selling any real properties obtained from the plaintiffs. Each of these motions will be discussed in turn.

1. Motion for Entry of Default Judgment

Pursuant to Rule 55 of the Federal Rules of Civil Procedure, plaintiffs seek entry of default judgment against defendants Pro Indiviso, Inc., Scona, Inc., Alva Harris, Jared Harris, Evelyn Harris, Kent Carlson, Grant Hann, and Darrell Harris. Rule 55 describes a two-step process by which a default judgment may be entered. First, under Rule 55(a), a plaintiff may request the clerk to enter a default against a party upon a showing that the party "has failed to plead or otherwise defend as provided by these rules. . . . " After entry of default, and upon application by the plaintiff, a default judgment may then be entered by the clerk or by the court pursuant to Rule 55(b).

Plaintiffs have improperly asked this court to enter a default judgment without first obtaining an entry of default by the clerk. Since plaintiffs' motion for entry of default judgment is improper, it is denied.

2. Motion for Sanctions

Next, plaintiffs ask the court to sanction these defendants and to strike their answers and motions due to their alleged default. An explanation of some terminology is in order here. When a defendant is in "default," it simply means that "the defendant has failed to plead or otherwise respond to the complaint within the time required by the Federal Rules." *See* Schwarzer, Tashima & Wagstaffe *Federal Civil Procedure Before Trial* ¶ 6:2 (1999). Defendant's default by itself, however, has no legal consequences. *Id.* at ¶ 6:3. "Until the default is 'entered' by the court clerk, defendant can still appear in the action." *Id.* In other words, "if no default has yet been 'entered,' the clerk must accept for filing defendant's pleadings or motions although they are filed late. Once they are filed, it is too late for entry of default, and defendant can proceed with its defense." *Id.*

Since no default was entered here, the clerk properly accepted the said defendants' answers and motions. Therefore, plaintiffs' motion for sanctions and to strike defendants' answers and motions is denied.

3. Motion for Permanent Injunction

Finally, plaintiffs seek a permanent injunction to restrain certain defendants from selling any real properties they may have obtained from the plaintiffs. In addition, plaintiffs seek to require defendants to return plaintiffs' real properties. The requirements for the issuance of a permanent injunction, which are not cited by the plaintiffs, are "the likelihood of substantial and

immediate irreparable injury and the inadequacy of remedies at law." *LaDuke v. Nelson*, 762 F.2d 1318, 1330 (9th Cir. 1985), modified, 796 F.2d 309 (9th Cir. 1985). The court declines to address plaintiffs' request for a permanent injunction because plaintiffs did not even make an attempt to show the court that they meet the specific standards which permit the grant of a permanent injunction.

CONCLUSION

1. The IRS defendants, defendant Richard Ward, the federal judges, and United States Attorney Betty Richardsons' motion to dismiss pursuant to Rule 8 is granted. For the reasons stated above, this action is now dismissed with prejudice as to *all* defendants.

2. The IRS defendants, defendant Richard Ward, and defendant Jared Harris' motion to dismiss pursuant to Rule 12(b)(6) is also granted.

3. These resolutions moot the need to decide any motions brought pursuant to Rule 12(b)(5) and Rule 4.

4. Plaintiffs' motion for entry of default judgment, for sanctions, and for a permanent injunction is denied.

5. The Clerk of Court is directed to close this file.

IT IS SO ORDERED.

Dated: October 21, 1999

/s/ Edward J. Garcia
EDWARD J. GARCIA, JUDGE
UNITED STATES DISTRICT
COURT

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UNITED STATES DISTRICT COURT,
DISTRICT OF IDAHO

FILE NO: CV 98-383-E-EJG, Assigned

JOHN N. BACH, et al,

Plaintiffs/Appellants,

v.

UNITED STATES OF AMERICA, INTERNAL REVENUE SERVICE, et al,

Defendants/Respondents.

_____/

NINTH CIRCUIT DKT NO:

NOTICE OF APPEAL TO U.S. COURT OF APPEALS, NINTH CIRCUIT, FROM FINAL ORDER OF DISMISSAL WITH PREJUDICE, DATED October 21, 1999, But no Served Immediately From U.S.D.C., Idaho, CV 98-383-E-EJG, Assigned

NOTICE IS HEREBY GIVEN that all the plaintiffs/appellants, to wit; JOHN N. BACH, A. DEAN BOWLES & BETTY BOWLES, J.D. RITCHIE & ELAINE RITCHIE,

DETSEL J. PARKINSON AND EARLENE PARKINSON AND GAREN HANCOCK, all appearing in pro per/se herein, do hereby appeal to the UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT from that final order ORDER OF DISMISSAL WITH PREJUDICE, which is dated October 21, 1999 but which order was served without any certificate of service being finalized upon these appellants, and which service was staggered, and capriciously mailed to the individual appellants herein appealing sometime, from the earliest on October 26, 1999 until or through November 4, 1999.

The Plaintiffs/Appellants attach hereto the first eight (8) pages of their AMENDED COMPLAINT, filed August 2, 1999, and which per said ORDER OF DISMISSAL WITH PREJUDICE of October 21, 1999, along with the CERTIFICATE OF SERVICE BY MAIL page 30 to said AMENDED COMPLAINT, showing the attorneys for the defendants/respondents that had appeared in said underlying U.S.D.C., District of Idaho action CV 98-383-E-EJG, Assigned. Per the provisions of FRAP, Rule 12(b) no Representation Statement is required since this NOTICE OF APPEALS is filed by pro se Appellants. Rules for Ninth Circuit of Appeals, Rule 3-2(a)(3).

If for any reason further information or documents are needed to be filed herein, each Plaintiff/Appellant request they each be notified immediately by telephone at the numbers set forth for each on the upper left of page 1, supra, and that they also be notified by mail, per the mailing addresses they also set forth on the upper left corner of page 1, supra.

DATED: November 19, 1999

/s/ A. Dean Bowles
A. DEAN BOWLES

/s/ John N. Bach
JOHN N. BACH

/s/ J. D. Ritchie
J. D. RITCHIE

/s/ Betty Bowles
BETTY BOWLES

/s/ Detsel J. Parkinson
DETSEL J. PARKINSON

/s/ Elaine Ritchie
ELAINE RITCHIE

/s/ Garen Hancock
GAREN HANCOCK

/s/ Earlene Parkinson
EARLENE PARKINSON

NOTE: This NOTICE OF APPEAL was telephonically discussed with "Howard" of the Office of the Clerk, U.S. Court of Appeals, Ninth Circuit, 95 7th Street, San Francisco, CA 94103-1526, whose telephone number is (415) 556-9751.

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOHN N. BACH; GAREN HANCOCK; DETSEL J. PARKINSON; A. DEAN BOWLES; BETTY J. BOWLES; JABEZ D. RITCHIE; ELAINE RITCHIE, Plaintiffs-Appellants, v. CINDY MASON; PHYLIS J. GUGIN; MARK DAVIS; AL SEEFRIED; CHERYL MOSBY; KAY MOSHER; HESTER PULLING; KEITH FARRER; JACK CHESKATY; GERALD H. HESCHELL; RICHARD OWENS; STEVE HINES; DONALD JENSEN; PAM BIGELOW; SID BECKSTEAD; CLIVE LONDON; MERRY TRUDEAU; RANDY HARPER, Federal agencies and officers, Internal Revenue Service; EDWARD J. LODGE; B. LYNN WINMILL; LARRY BOYLE; MICHAEL H. WILLIAMS, Federal Judges; RICHARD WARD; BETTY RICHARDSON, United States	No. 99-36180 D.C. No. CV-98-00383-EJG MEMORANDUM[1] (Filed Feb. 21, 2001)

[1] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by 9th Cir. R. 36-3.

Attorneys Office; BONNEVILLE COUNTY; BONNEVILLE COUNTY SHERIFF; BYRON STOMMELL; KAY CORTEZ; GINA DIXON; CHARLOTTE MUNNS; PAUL WILD; GLENN HUDERMAN; BONNEVILLE COUNTY CLERK; RON LONGMORE; BONNEVILLE COUNTY ASSESSOR; JEFFERSON COUNTY; JEFFERSON COUNTY RECORDER; JEFFERSON COUNTY SHERIFF; BLAIR OLSEN; JEFFERSON COUNTY PROSECUTOR; ROBIN DUNN; STEPHEN CLARK; MADISON COUNTY, IDAHO; MADISON COUNTY RECORDER; BETH REESE; MADISON COUNTY ASSESSOR; LYLE SAUREY; MADISON COUNTY SHERIFF; GREGG MOFFAT; TERRY BAIR; MADISON COUNTY PROSECUTOR; SID BROWN; KIP MANWARING; PRO INDIVISO, INC., an Idaho Corp.; SCONA, INC., an Idaho Corp.; ALVA A. HARRIS; JARED HARRIS; EVELYN HARRIS; KENT CARLSON; CARALEE CARLSON; GRANT E. HANN; DARRELL J. HARRIS; RAY RIGBY,

Defendants-Appellees,

and

STATE OF IDAHO TAX COMMISSION; DARYL JONES; ATTORNEY GENERAL'S OFFICE; ALAN G. LANCE; IDAHO STATE BAR, State agencies and officers; RICHARD J. ST. CLAIR, Judge; TED W. WOOD, Judge; FREMONT COUNTY, IDAHO; FREMONT COUNTY PROSECUTOR; FREMONT COUNTY SHERIFF; TERRY THOMPSON; FREMONT COUNTY CLERK & RECORDER; MICKIE FUNKE; JEROME COUNTY; JEROME COUNTY SHERIFF; JEROME COUNTY CLERK; TETON COUNTY, IDAHO; TETON COUNTY CLERK; TETON COUNTY ASSESSOR; CITY OF ST. ANTHONY; CITY POLICE; MAYOR, CITY OF ST. ANTHONY; ROY PARKER; CITY ATTORNEY, CITY OF ST. ANTHONY; LISA BERTOSCH; TIM WILSON; CARLTON ERICKSON; ST. ANTHONY CITY COUNCIL; EVELYN MASON; RICHARD LAW; US BANK/WEST ONE BANK; MARK BYERLY; LARRY DROLLINGER; NELDA DROLLINGER; JOHN SANDERS; BRUCE OLSEN; WILLIAM TULLOCK; BOBBIESUE TULLOCK; DOES 1-200,

Defendants.

Appeal from the United States District Court
for the District of Idaho
Edward J. Garcia, District Judge, Presiding

Submitted February 12, 2001[2]

Before: LEAVY, THOMAS, and RAWLINSON, Circuit Judges.

Appellants appeal pro se the district court's dismissal of their action with prejudice for failing to comply with the court's order to provide "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). We have jurisdiction under 28 U.S.C. § 1291. We review for abuse of discretion a district court's Fed. R. Civ. P. 41(b) dismissal and affirm. *See McHenry v. Renne*, 84 F.3d 1172, 1177-78 (9th Cir. 1996).

The clerk shall file appellants' additional reply briefs previously received on May 26, 2000, and June 8, 2000. The requested relief contained therein is denied.

AFFIRMED.

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[2] Because we unanimously find this case suitable for decision without oral argument, we deny appellants' request for oral argument. *See* Fed. R. App. P. 34(a)(2).

963 P.2d 1178

PRO INDIVISO, INC.,
Plaintiff-Respondent,

v.

MID-MILE HOLDING TRUST as nominee of A. dean Bowles and Betty J. Bowles, his wife, and A. Dean Bowles and Betty J. Bowles, his wife, individually,
Defendants-Appellants.

No. 23731.

Supreme Court of Idaho,
Boise, May 1998 Term.

Aug. 28, 1998.

A. Dean Bowles and Betty J. Bowles, Idaho Falls, pro se, Defendants-Appellants.

Alva A. Harris, Shelley, for Plaintiff-Respondent.

TROUT, Chief Justice.

This is an appeal from the district court's grant of partial summary judgment in favor of the plaintiff, Pro Indiviso, Inc. (Pro Indiviso), for a writ of assistance.

I.

BACKGROUND

A. Dean and Betty Bowles, by their own admission, owe money to the United States for failure to pay income taxes. In July 1993, Dean and Betty filed a deed in which they conveyed title to their real property to Mid-Mile Holding Trust (Mid-Mile). The deed does not state for whom the property is being held in trust and there is no trust document in the record. On March 1, 1994, the

Internal Revenue Service (I.R.S.) filed a lien on the property for unpaid taxes. The lien named Mid-Mile as nominee of Dean and Betty Bowles. A tax sale was held in June 1995, at which Pro Indiviso purchased the property for $32,100. The I.R.S. issued Pro Indiviso a certificate of sale. After the period of redemption had expired, Pro Indiviso received a deed from the I.R.S. which it recorded on December 14, 1995.

On March 12, 1996, Pro Indiviso filed a verified complaint against Mid-Mile as nominee of Dean and Betty Bowles seeking ejectment, a writ of assistance and damages. Mid-Mile was never served, but Dean and Betty were served and Betty entered a general appearance by filing a "Motion to Dismiss Due to Fraud of Internal Revenue Service, etc." On April 5, 1996, Pro Indiviso filed a motion for a writ of assistance and scheduled a hearing on all pending motions. On April 24, Betty filed a motion to dismiss and a motion to set aside hearing, but did not schedule a hearing on either motion. On May 3, Pro Indiviso filed a motion to strike Betty's "Motion to Set Aside Due to Fraud of Internal Revenue Service, etc." and a notice of hearing for May 13. On May 10, Betty filed an objection to appointment of magistrate.

A hearing was held on May 13, 1996. Counsel and a representative for Pro Indiviso attended. Neither Dean, Betty, Mid-Mile nor an attorney representing them attended the hearing. The judge dismissed the objection to appointment of magistrate since the matter was before a district court judge and denied Betty's other motions. The district court treated Pro Indiviso's motion for a writ of assistance as a motion for partial summary judgment. The court granted the motion holding that Pro Indiviso

had submitted a verified complaint that it held a recorded deed to the property, and that Dean and Betty had produced no admissible evidence or affidavits to dispute this fact.

Following the hearing, Betty filed a "Judicial Notice of Objection to Hearing, etc.," two motions for summary judgment, and a motion to strike. Dean filed a motion to dismiss due to fraud (mistaken identity), a "Judicial Notice" (claiming the district court judge was a magistrate), and a motion for default judgment. Since no hearing had ever been scheduled and Pro Indiviso had never responded to any of the motions, the district court issued a memorandum decision and order on July 2, 1996. The court denied the objections to the hearing because Dean and Betty had produced no evidence why they could not have appeared. The motions for summary judgment were denied because they simply restated the previous "Motion to Dismiss Due to Fraud of Internal Revenue Service, etc." and contained no affidavits or admissible evidence. The motion to strike Pro Indiviso's motion to strike was denied as moot since Pro Indiviso's motion had previously been denied. The motion to strike because of mistaken identity was denied because there was no basis in law for granting the motion.[1] The court treated the "Judicial Notice" (objection to magistrate) as a motion for reconsideration and denied it because no new facts had been presented. The motion for a default judgment was dismissed because no affidavits, supporting briefs, or

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[1] The motion was based on the fact that in the complaint the defendant's names were spelled in all uppercase letters.

notice of hearing had been filed as required by I.R.C.P. 7(b)(3).

Dean and Betty continued to file motions including a "Request for Evidenciary [sic] Hearing" (Dean), a motion for reconsideration (Betty), a motion to dismiss based on lack of subject matter jurisdiction (Dean), a motion for default judgment (Betty), a renewed motion to dismiss and vacate the sale presented as an affidavit (Betty), and a renewed motion to dismiss due to I.R.S. fraud presented as an affidavit and memorandum of law (Dean). A hearing was held on the motions which was attended by Dean, Betty, and counsel for Pro Indiviso. In a memorandum decision and order, the court treated the request for an evidentiary hearing as a motion for reconsideration of the court's grant of the writ of assistance. The court noted that Dean and Betty had failed to present any evidence to create an issue of material fact either at the time of the original hearing or in their request for an evidentiary hearing. Pro Indiviso had a recorded deed which was prima facie evidence of the right to possess. Therefore, the court denied the request. For the same reasons, the court denied the motion for reconsideration. The court also denied the motion to dismiss for lack of subject matter jurisdiction holding that Idaho courts did have jurisdiction to determine right of possession and to issue a writ of assistance. The court denied the motion for a default judgment, ruling that the failure of Pro Indiviso to respond to Dean's earlier motion to dismiss for lack of subject matter jurisdiction did not require entry of a default judgment. Finally, the court denied the renewed motion to dismiss based on fraud. The court ruled that none of the cases cited applied to these facts and that if

Dean and Betty wanted to attack the lien and sale they would have to do so through an administrative hearing or by filing suit against the I.R.S. in federal district court.

On August 7, 1996, Dean and Betty filed an amended notice of appeal to this Court which was dismissed because there was no final judgment in the action. On September 6, 1996, Dean and Betty filed an answer to the original complaint filed in March.

On January 13, 1997, a final pre-trial conference was held. No representative of Pro Indiviso attended the conference. Dean and Betty moved for dismissal under I.R.C.P. 16(i). The court dismissed, without prejudice, all of Pro Indiviso's remaining claims.

In the meantime, Dean and Betty had filed a motion to compel discovery, a motion to vacate trial date, a motion to dismiss, and a motion and affidavit for summary judgment. A hearing was held on January 28, 1997. On February 10, the court issued a memorandum decision and order in which it granted the motion to vacate the trial date and denied all of the other motions because, following the dismissal of Pro Indiviso's remaining claims, there were no claims pending before the court.

Dean and Betty then filed a motion to set aside the court's February 10 order on March 21. Pro Indiviso filed a motion to strike Dean and Betty's motion and requesting sanctions. Dean and Betty then filed a motion to strike Pro Indiviso's motion to strike. The two motions filed by Dean and Betty were filed in the name of Mid-Mile. Pro Indiviso noticed a hearing for April 1, but no one appeared. The court exercised its authority under I.R.C.P. 7(b)(3) to rule on the matter without a hearing

and in a memorandum decision and order, the court treated the motion to set aside as a motion to reconsider. The court ruled the motion untimely because it was filed more than 14 days after the entry of the order. In addition, the court ruled that even if timely, the motion did not contain any facts or law that would cause the court to alter its earlier decision. The court granted Pro Indiviso's motion to strike the two motions submitted in the name of Mid-Mile because Mid-Mile was never served, never entered an appearance, never intervened, and the motions were not signed by any attorney representing Mid-Mile. The court, however, denied Pro Indiviso's request for sanctions.

Another notice of appeal was filed on March 24, 1997 which was conditionally dismissed due to lack of a final judgment. The district court then issued a final judgment on July 22, 1997 and this Court reinstated the appeal.

On appeal, Dean and Betty claim that the district court erred in granting partial summary judgment in favor of Pro Indiviso on its motion for a writ of assistance because (1) Pro Indiviso did not specifically identify in its complaint a statutory basis for bringing its action, (2) the I.R.S. did not follow its own regulations in conducting the sale, and (3) the district court failed to look behind the deed obtained by Pro Indiviso to determine its validity. Dean and Betty also claim the district court should have dismissed the action because Mid-Mile was not a party to the suit. Finally, Dean and Betty argue that Pro Indiviso did not have standing to bring an action for ejectment because it had not previously quieted title in the property.

II.

STANDARD OF REVIEW

> When faced with an appeal from summary judgment, this Court must determine whether the pleadings, depositions, and admissions on file, together with affidavits, if any, show there is no genuine issue as to any material fact, and that the moving party is entitled to a judgment as a matter of law. The non- moving party is to be given the benefit of all favorable inferences which reasonably might be drawn from the evidence, and all doubts are to be resolved against the moving party. The motion must be denied if the evidence is such that conflicting inferences may be drawn therefrom and if reasonable people might reach different conclusions.

Farmers National Bank v. Shirey, 126 Idaho 63, 67-68, 878 P.2d 762, 766-67 (1994) (citations omitted).

A trial court's grant of a writ of assistance is reviewed for abuse of discretion. *Williams v. Sherman,* 35 Idaho 169, 205 P. 259 (1922); *Federal Land Bank v. Parsons,* 118 Idaho 324, 796 P.2d 533 (Ct.App.1990).

III.

SUMMARY JUDGMENT

Dean and Betty argue that the court erred in considering Pro Indiviso's motion for a writ of assistance because Pro Indiviso had not identified a statutory basis for the ejectment and writ of assistance in the original complaint. Under I.R.C.P. 8(a)(1), Pro Indiviso's complaint only needed to contain "a concise statement of the facts constituting the cause of action and a demand for

relief." *Clark v. Olsen,* 110 Idaho 323, 325, 715 P.2d 993, 995 (1986). The complaint clearly states that the relief sought is ejectment and a writ of assistance, so the only question is whether Pro Indiviso's complaint contained sufficient facts to constitute a cause of action. Since this is an appeal from a partial summary judgment, we must also examine whether there are genuine issues as to any material fact and whether Pro Indiviso is entitled to a judgment as a matter of law.[2]

In an action for ejectment, the plaintiff must allege and prove (1) ownership, (2) possession by the defendants, and (3) refusal of the defendants to surrender possession. *Petty v. Petty,* 70 Idaho 473, 223 P.2d 158 (1950). In this case, Pro Indiviso presented a deed from the I.R.S. granting title to Pro Indiviso. A deed given as the result of a tax sale is prima facie evidence of the facts stated in the deed. 26 U.S.C. § 6339(b)(1). It was uncontroverted that the redemption period had passed and that Pro Indiviso had received a deed which it properly recorded. "If no redemption is made the value of the use and occupation must follow the holder of legal title, namely, the purchaser." *Caldwell v. Thiessen,* 60 Idaho 515,

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[2] As noted earlier, Pro Indiviso never filed a motion for summary judgment, as such, but only filed a motion for a writ of assistance which the trial court then treated as a motion for summary judgment under I.R.C.P. 56. On appeal, Dean and Betty have only challenged the basis for the grant of partial summary judgment and not the procedure used. Because the issue has not been raised by the parties, we will not address the propriety of the procedure used by the trial court. *The Highlands, Inc. v. Hosac,* 130 Idaho 67, 936 P.2d 1309 (1997); *MacLeod v. Reed,* 126 Idaho 669, 889 P.2d 103 (Ct.App.1995).

519, 92 P.2d 1047, 1048 (1939). Pro Indiviso presented evidence of ownership in the form of a recorded deed. There was no admissible evidence presented to contradict the validity of the deed or the claim that Dean and Betty were in possession of the property adversely to Pro Indiviso's interest. Pro Indiviso, therefore, pleaded and proved a case for ejectment.

"A writ of assistance is a form of process issued by a court of equity to transfer the possession of property, and more specifically lands, the title or right to which it has previously adjudicated. . . . " *Eagle Rock Corp. v. Idamont Hotel Co.*, 60 Idaho 639, 647, 95 P.2d 838, 841 (1939).

> The sole question to be determined on the motion is whether applicant has a right, as against the party in possession to use the writ to obtain possession. In the absence of any claim of an independent paramount title, the only question on such application is whether the decree has or has not been complied with.

Id. at 648, 95 P.2d at 841.

The district court had determined that Pro Indiviso was the owner of the property by the deed received from the I.R.S. It was not contested that Dean and Betty were in possession of the property and that their possession was adverse to Pro Indiviso. The fact that neither Dean nor Betty appeared at the hearing on the motion for a writ of assistance did not prevent the court from reaching a decision on the motion. *Federal Land Bank v. Parsons,* 118 Idaho 324, 796 P.2d 533 (Ct.App.1990). Therefore the district court properly granted the motion for a writ of assistance.

Dean and Betty claim the district court should have invalidated the sale because the I.R.S. did not follow the proper procedures in conducting the sale. This argument is doomed by Dean and Betty's claim that Mid-Mile is the owner of the property. Since Dean and Betty claim not to have any ownership interest in the property, they cannot show any individualized injury. A generalized interest in seeing that the government follows the law or its regulations is insufficient to confer standing absent some particularized harm to the party. *Student Loan Fund of Idaho, Inc. v. Payette County*, 125 Idaho 824, 828, 875 P.2d 236, 240 (Ct.App.1994). Since Dean and Betty have no interest in the property, they cannot claim any individualized harm and so have no standing to challenge the sale on the basis that the I.R.S. did not follow its own regulations.

Dean and Betty also claim the district court should have looked behind Pro Indiviso's deed to determine its validity. This argument likewise fails due to Dean and Betty's claim that they have no ownership interest in the property. Since Dean and Betty claim no ownership interest, they have no standing to challenge the validity of Pro Indiviso's deed.

Next Dean and Betty argue that the district court should have dismissed the action because Mid-Mile, as owner of the property, was not a party to the suit. Had this been a quiet title action, this argument would have merit. As it is, however, the district court only determined the right of Dean and Betty to possess the property as against Pro Indiviso. The district court specifically refused to determine the rights, if any, of Mid-Mile. It is not necessary that all persons with an interest in the subject matter of the suit be joined as parties, but only

those who have an interest in the object of the suit. *Idaho Irrigation Co. v. Dill,* 25 Idaho 711, 716, 139 P. 714, 716 (1914); *see also, State ex rel. Moore v. Howell,* 111 Idaho 963, 729 P.2d 438 (Ct.App.1986). In this case, the rights of Dean and Betty against Pro Indiviso could be determined independent of Mid-Mile's rights. Thus, Mid-Mile was not indispensable and so dismissal was not required.

Finally, Dean and Betty argue that because Pro Indiviso did not bring a quiet title action it had no standing to bring a suit for ejectment. To satisfy the standing requirement, litigants must allege an injury in fact and a substantial likelihood that judicial relief will redress the alleged injury. *Miles v. Idaho Power,* 116 Idaho 635, 778 P.2d 757 (1989). Standing does not require that the party prove their case before the commencement of trial. Here, Pro Indiviso alleged that it had a deed giving Pro Indiviso title to the property in question and that Dean and Betty were in possession of the property adversely to Pro Indiviso's interest. Thus, it alleged an injury in fact, and because successful prosecution of an action for ejectment and a writ of assistance would redress the injury, Pro Indiviso met the requirements of standing. To require every land owner who wants to eject someone from their property to first prove ownership through a quiet title action would be unreasonable and go beyond the requirements of standing.

IV.

ATTORNEY FEES

Pro Indiviso has requested attorney fees under I.A.R. 41 and I.C. § 12-121. An award of attorney fees is appropriate when the appeal is frivolous, unreasonable or without foundation. *Keller v. Rogstad,* 112 Idaho 484, 733 P.2d 705 (1987). Here Dean and Betty have raised the same issues and arguments which were raised before the district court. Most of their motions are incomprehensible and lack any basis in law. The repeated filing of these motions, and the arguments in support on appeal, are frivolous and unreasonable and justify an award of fees under I.C. § 12-121.

V.

CONCLUSION

The district court's grant of the writ of assistance is hereby affirmed. Costs and fees on appeal are awarded to the respondent.

JOHNSON, SILAK, SCHROEDER and WALTERS, JJ., concur.

973 P.2d 142

Alden Dean BOWLES and Betty Joan Bowles,
Plaintiffs-Appellants,

v.

PRO INDIVISO, INC., an Idaho corp., Kent E. Carlson, Carolee Carlson, Alva Harris and Evelyn Harris, Defendants to certain real property described as follows: Beginning at a point North 591.8 feet from the West quarter corner of Section 9, Township 3 North, Range 39, East of the Boise Meridian, Bonneville County, Idaho; and running thence East 367.8 feet; thence North 163.8 feet; thence West 367.8 feet; thence South 163.8 feet, to the point of beginning, the same being part of the Southwest quarter of the North-west quarter of section 9, Township 3 North, Range 39, East of the Boise Meridian. Less road right of way. Street address: 12324 N. 75th E., Idaho Falls, Idaho, Defendants-Respondents.

No. 24243.

Supreme Court of Idaho,
Pocatello, October 1998 Term.

Feb. 3, 1999.

Alden Dean Bowles and Betty J. Bowles, Idaho Falls, appellants pro se.

Alva A. Harris, Shelley, for respondents.

SILAK, Justice.

Alden Dean and Betty Joan Bowles (the Bowles), and representatives of Mid-Mile Holding Trust brought an action against Pro Indiviso, Inc., to quiet title to certain real property. The district court granted judgment on the pleadings in favor of Pro Indiviso, and awarded costs,

fees, and sanctions against the Bowles. The Bowles appeal.

I.

FACTS AND PROCEDURAL BACKGROUND

A. Facts

The Bowles owed money to the United States for taxes not paid in 1990 and 1991. In July 1993, the Bowles purportedly conveyed title to certain real property in Bonneville County to Mid-Mile Holding Trust (Mid-Mile). Later, in March 1994, the Internal Revenue Service (I.R.S.) filed a lien on that real property in order to recover the money. The lien named Mid-Mile as nominee for the Bowles.

A tax sale was held in June, 1995 at which the I.R.S. sold the subject property at public auction. Pro Indiviso, an Idaho corporation, purchased the property and received a certificate of sale. After the period for redemption had passed, Pro Indiviso received a deed from the I.R.S. which it then recorded.

Later, Pro Indiviso filed an action for ejectment which the Bowles opposed. In that separate action, Mid-Mile was not served with the complaint, and so was dismissed from the suit. Partial summary judgment was granted in favor of Pro Indiviso. On appeal to this Court, the decision of the district court was affirmed. *Pro Indiviso, Inc., v. Mid-Mile Holding Trust,* 131 Idaho 741, 963 P.2d 1178 (1998). In pertinent part, this Court held that the Bowles did not have standing to challenge the legitimacy of the tax sale on the basis that the I.R.S. did not follow its own

regulations because they could not show individualized harm. Also, this Court held that the Bowles' lack of standing prevented them from challenging the validity of Pro Indiviso's deed.

Subsequently, the Bowles and representatives of Mid-Mile brought this action to quiet title to the subject real property. The Bowles maintain that they do not own, nor have legal title to the property but that they are merely interested parties. The Bowles have pursued this action pro se; likewise, the representatives of the trust were pro se plaintiffs.

As a result of many diverse motions the district court made several determinations. It prohibited Mark Miller, alleged trustee of Mid-Mile, from representing any natural person or entity in Idaho, including Mid-Mile. Additionally, it dismissed Mid-Mile's complaint without prejudice, to refile after the complaint is signed by an attorney licensed to practice law in Idaho courts. The district court also considered Pro Indiviso's summary judgment motion to be a motion for judgment on the pleadings, which it granted, thereby dismissing the Bowles' amended complaint with prejudice. Similarly, it granted the defendants Carlson's and Harris' motion for judgment on the pleadings, thereby dismissing the Bowles' amended complaint with prejudice as to all remaining defendants. It also granted a motion for Rule 11 sanctions against the Bowles and several motions for attorney fees and costs in favor of the defendants. Finally, the court denied the Bowles' motion for reconsideration and modification of the judgments, and awarded additional attorney fees against the Bowles.

B. Procedural Background

In January 1997, Mid-Mile, Eileen Hancock, as trustee for Mid-Mile, and the Bowles filed a complaint seeking to quiet title to the subject property. In June 1997, pursuant to court order, the Bowles filed an amended complaint against Pro Indiviso, the Carlsons, and the Harrises. The Bowles alleged that in July of 1993, by deed recorded in Bonneville County, Mid-Mile Holding Trust became the owner of the subject property in fee simple. However, despite the order of the district court that a copy of the trust agreement be filed with the district court within ten days, the plaintiffs failed to present any admissible evidence to the district court that supported the existence of Mid-Mile Holding Trust as a lawfully created trust in Idaho. The defendants properly filed answers to the Bowles' complaints. The amended complaint stated two causes of action: quiet title, and deprivation of due process of law.

On July 2, 1997, defendant Pro Indiviso filed a motion for summary judgment and sanctions. On July 7, 1997, the other defendants filed a motion for judgment on the pleadings. On July 25, 1997, the Bowles filed a memorandum opposing the motion for summary judgment and motions seeking attorney fees.

After hearing argument on the pending motions, the district court granted the motion for judgment on the pleadings as to all defendants. In its corresponding Memorandum Decision and Order, dated August 14, 1997, the district court awarded attorney fees against the Bowles in the amount of $450.00. Additionally, the court awarded $1800.00 in attorney fees against Mid-Mile Holding Trust,

and trustees Mark Miller and Eileen Hancock. Costs were also awarded against all plaintiffs. On August 29, 1997, the individual defendants filed a motion for additional attorney fees and costs.

On September 2, 1997, the Bowles filed a motion for reconsideration and for modification of the court's August 25, 1997 judgment issued pursuant to its Memorandum Decision and Order of August 14, 1997. At the September 15, 1997 hearing on the pending motions, the Bowles submitted a "verified judicial notice" objecting to the payment of all attorney fees. The district court issued another Memorandum Decision and Order on September 30, 1997, in which it denied the Bowles' motion for reconsideration and modification, and awarded additional attorney fees against the Bowles in the amount of $1,392.00.

The Bowles timely appealed to this Court. However, neither the trust nor any of the representatives of the trust appealed any order or judgment of the district court. The Bowles do not appeal any specific judgment or order, but instead appeal "all final judgments, adverse orders, rulings, memoranda or determinations entered" by the district court.

II.

ISSUES ON APPEAL

The appellants Bowles presented more than fifteen issues on appeal; yet, the respondent Pro Indiviso maintains that there are no issues on appeal. Due to the number and nature of the issues presented to the Court, they are generally summarized as follows:

1. Whether the district court erred in granting judgment on the pleadings in favor of Pro Indiviso;

2. Whether the district court erred in ordering the Bowles to pay attorney fees, costs, and sanctions; and

3. Whether Pro Indiviso is entitled to attorney fees on appeal.

III.

STANDARD OF REVIEW

A. Judgment On The Pleadings.

The standard of review applicable to a summary judgment also applies to a judgment on the pleadings. *See Trimble v. Engelking*, 130 Idaho 300, 302, 939 P.2d 1379, 1381 (1997). The standard by which this Court reviews a summary judgment is the same as the standard used by the lower court in ruling on a motion for summary judgment. *See State v. Rubbermaid Inc.*, 129 Idaho 353, 355-56, 924 P.2d 615, 617-18 (1996). Upon review, all disputed facts are to be liberally construed in favor of the non-moving party, and all reasonable inferences that can be drawn from the record are to be drawn in favor of the non-moving party. *See id.* at 356, 924 P.2d at 618. Summary judgment is appropriate if "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c); *Harris v. State, Dep't of Health & Welfare*, 123 Idaho 295, 297, 847 P.2d 1156, 1158 (1992).

B. Attorney Fees, Costs And Sanctions.

An award of attorney fees pursuant to section 12-121 of the Idaho Code is discretionary and is subject to review and vacation only upon a showing of an abuse of discretion. *See Zaleha v. Rosholt, Robertson & Tucker, Chtd.*, 131 Idaho 254, 257, 953 P.2d 1363, 1366 (1998); *Savage Lateral Ditch Water User. Ass'n v. Pulley*, 125 Idaho 237, 250, 869 P.2d 554, 567 (1993).

Also, this Court applies the abuse of discretion standard to review issues of costs under I.R.C.P. 54(d)(1). *See Vaught v. Dairyland Ins. Co.*, 98.6 ISCR 196, 197, 131 Idaho 357, 360, 956 P.2d 674, 677; *Adams v. Krueger*, 124 Idaho 74, 77, 856 P.2d 864, 867 (1993). In addition, in reviewing the award of sanctions pursuant to Rule 11(a)(1) of the Idaho Rules of Civil Procedure, this Court uses an abuse of discretion standard. *See Sun Valley Shopping Ctr. v. Idaho Power*, 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991).

IV.

ANALYSIS

A. The District Court Correctly Granted Judgment On The Pleadings In Favor Of Pro Indiviso.

The district court granted judgment on the pleadings in favor of Pro Indiviso, thereby dismissing the Bowles' complaint. That court concluded in its August 14, 1997 memorandum Decision and Order "as a matter of law that both the quiet title claim and the second claim for 'taking of [the Trust's] property without due process of law' cannot be prosecuted by the Bowles, who allege no

interest in the property." Due to the nature of the argument presented by the Bowles, it is difficult to determine upon what grounds the decision of the district court is challenged. Presumably, the Bowles challenge the district court's determination that they do not have standing.

"An inherent duty of any court is to inquire into the underlying interest at stake in a legal proceeding." *Miller v. Martin*, 93 Idaho 924, 926, 478 P.2d 874, 876 (1970). In every lawsuit there must be a justiciable interest cognizable in the courts as a precondition to any party maintaining a lawsuit. *See id.* "Standing is that aspect of justiciability focusing on the party seeking a forum rather than on the issues he wants adjudicated." *Bentel v. County of Bannock*, 104 Idaho 130, 135, 656 P.2d 1383, 1388 (1983) (quoting *Life of the Land v. Land Use Commission of the State of Hawaii*, 63 Haw. 166, 623 P.2d 431, 438 (Haw.1981)). Stated more precisely, "[t]he doctrine of standing focuses on the party seeking relief and not on the issues the party wishes to have adjudicated." *Miles v. Idaho Power Co.*, 116 Idaho 635, 641, 778 P.2d 757, 763 (1989).

In order to fulfill the standing requirement, the plaintiff must " 'allege such a personal stake in the outcome of the controversy' as to warrant *his* invocation of the court's jurisdiction." *Bentel*, 104 Idaho at 135-36, 656 P.2d at 1388-89 (quoting *Life of the Land*, 623 P.2d at 438) (emphasis in original). The party seeking to invoke the court's jurisdiction must allege such a personal stake in the outcome of the controversy as to assure the concrete adversariness which sharpens the presentation upon which the court so depends. *See Miles*, 116 Idaho at 641, 778 P.2d at 763 (quoting *Duke Power Co. v. Carolina Env. Study Group*, 438 U.S. 59, 72, 98 S.Ct. 2620, 2630, 57

L.Ed.2d 595 (1978)). This "personal stake" requirement demands that the plaintiff allege a distinct palpable injury to himself. *See id.* The Bowles did not do so; instead, they alleged that they were "merely interested parties" in the controversy.

Further, to satisfy the requirement of standing, the Bowles must have alleged or demonstrated an injury in fact and a substantial likelihood that the judicial relief requested will prevent or redress the claimed injury. *See Miles v. Idaho Power Co.*, 116 Idaho at 641, 778 P.2d at 763. However, the Bowles have not alleged or demonstrated such an injury; nor have they demonstrated a substantial likelihood that the judicial relief requested would prevent or redress the injury. Thus, the district court correctly granted judgment on the pleadings, thereby dismissing the Bowles' complaint due to their lack of standing.

The Bowles also claim that the district court erred by failing to address their second cause of action, "taking of property without due process of law." However, this Court has "repeatedly stated that [it] will not address constitutional questions not necessary to the resolution of the cause." *V-1 Oil Co. v. State Tax Comm'n*, 112 Idaho 508, 510, 733 P.2d 729, 731 (1987). Since the cause can be resolved based on the Bowles' lack of standing, neither the district court nor this Court is required to address the Bowles' second cause of action. Therefore, we affirm the district court's order granting judgment on the pleadings in favor of Pro Indiviso.

B. The District Court Did Not Err In Ordering The Bowles To Pay Attorney Fees, Costs, And Sanctions.

The district court awarded costs, attorney fees, and sanctions against the Bowles in two separate Memorandum Decision and Order decrees. Review of those decrees, in light of the applicable standard of review, demonstrates that the district court did not abuse its discretion. "In reviewing an exercise of discretion, this Court must consider " '(1) whether the trial court correctly perceived the issue as one of discretion; (2) whether the trial court acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) whether the trial court reached its decision by an exercise of reason.' " *Zaleha,* 131 Idaho at 257, 953 P.2d at 1366 (quoting *Sun Valley Shopping Ctr. v. Idaho Power Co.,* 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991))."

It is evident from review of the Memorandum Decision and Order decrees that the district court perceived the issue of whether to grant attorney fees, costs, and sanctions as one of discretion, and that the district court acted within the limits of its discretion and consistently with applicable legal standards. Also, the logical and cogent nature of the district court's analysis of the related issues and arguments before it demonstrates that it reached its decision by an exercise of reason. We conclude that the district court did not abuse its discretion. Therefore, we affirm the district court's orders requiring the Bowles to pay attorney fees, costs, and sanctions.

C. This Court Must Decline To Address Several Issues Raised By Bowles.

The Bowles present several issues on appeal that this Court must decline to address. First, the Bowles ask the Court to decide whether the district court erroneously denied their motion for summary judgment. However, an order denying a motion for summary judgment is not a final order and a direct appeal cannot be taken from it. Moreover, an order denying a motion for summary judgment is not reviewable on appeal from a final judgment. *See Watson v. Idaho Falls Consol. Hospitals*, 111 Idaho 44, 46, 720 P.2d 632, 634 (1986); *Evans v. Jensen*, 103 Idaho 937, 941, 655 P.2d 454, 458 (Ct.App.1982). Therefore, the Court will not review the district court's order denying the Bowles' motion for summary judgment.

Second, the Bowles ask this Court to decide whether the deed from the I.R.S. conveyed title to the subject property to Pro Indiviso. In an earlier decision involving the same parties and closely related issues, this Court stated: "[s]ince [the Bowles] claim not to have any ownership interest in the property, they cannot show any individualized injury. . . . Since [the Bowles] have no interest in the property, they . . . have no standing to challenge sale [of the subject property]. . . . Since [the Bowles] claim no ownership interest, they have no standing to challenge the validity of Pro Indiviso's deed." *Pro Indiviso, Inc. v. Mid Mile Holding Trust*, 131 Idaho 741, 746, 963 P.2d 1178, 1183 (1998). Likewise, in this case, the Bowles lack standing to challenge the validity of the deed from the I.R.S. conveying title to Pro Indiviso. Thus, the Court will not

address the merits of the issue whether the deed from the I.R.S. conveyed title to Pro Indiviso.

Third, the Bowles present this Court with the issue "[a]re the attorneys for [the Defendant] part of an elaborate scheme with the I.R.S., that violates both the State Racketeering Act, . . . and the Federal R.I.C.O. Act, and is the Court's participation in that taking of property part of that scheme?" However, the Bowles completely failed to support the issue with argument or authority. It is well settled that "[w]hen issues on appeal are not supported by propositions of law, authority, or argument, they will not be considered." *State v. Zichko*, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996). Furthermore, the failure to support allegations of error with argument and authority is deemed a waiver of the issue. *In re Estate of Logan*, 120 Idaho 226, 231, 815 P.2d 35, 40 (Ct.App.1991). Hence, we will not address this issue.

Fourth, The Bowles ask this Court to decide whether a trust must be represented by a licensed attorney in the State of Idaho. The district court dismissed the complaint of the trust without prejudice to refile after being signed by an attorney licensed to practice law in the Idaho courts. However, neither the trust nor any of the representatives of the trust appeal any order or judgment of the district court. Significantly, the Bowles do not claim to represent the trust in any capacity, nor do they directly argue that they may raise the issue because they are beneficiaries of the trust. This issue is properly raised by the representatives of the trust, not the Bowles. Thus, because the Bowles lack standing to properly present this issue, its merits are not addressed.

Finally, the Bowles seem to argue that the district court erred by dismissing the trust because it was a necessary party to the quiet title action. However, this argument fails because the Bowles have no rights or interests that could be violated even if the trust were a necessary party. The district court dismissed the trust without prejudice and never quieted title in any party. Pro Indiviso did not make a claim for affirmative relief praying for title to be quieted in its favor. Therefore, we will not address the issue of whether the trust, if it even existed,[1] was a necessary party to the action.

V.

ATTORNEY FEES ON APPEAL

The respondents have requested attorney fees pursuant to I.C. § 12-121 and I.A.R. 41. An award of attorney fees is appropriate "if the law is well-settled and the appellants have made 'no substantial showing that the district court misapplied the law.' " *Keller v. Rogstad*, 112 Idaho 484, 489, 733 P.2d 705, 710 (1987) (quoting *Davis v. Gage*, 109 Idaho 1029, 1031, 712 P.2d 730, 732 (Ct.App.1985)). In this case the Bowles have presented arguments that are largely incomprehensible, unreasonable, and lacking foundation in law. There has been no showing that the district court misapplied the law. Hence, we conclude that it is proper to award attorney fees in favor of the respondents Pro Indiviso, Kent and Carolee Carlson, and Evelyn Harris. However, Alva Harris is the

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[1] Despite court order, there was never any evidence submitted supporting the existence of the trust as a legal entity.

attorney of record on appeal for all respondents, including himself. Therefore, to the extent that Alva Harris has represented himself on appeal, an award of attorney fees is inappropriate. *See Swanson & Setzke, Chtd. v. Henning,* 116 Idaho 199, 203, 774 P.2d 909, 913 (Ct.App.1989) (holding that the general rule against fee awards to pro se litigants is applicable to lawyers *pro se*).

The respondents have also requested the imposition of sanctions under Rule 11.1 I.A.R. on appeal. The pertinent part of Rule 11.1 states that, "[t]he signature of a [ ] . . . party constitutes a certificate that . . . to the best of the signer's knowledge, information and belief after reasonable inquiry [the suit] is well grounded in fact and is warranted by existing law . . . and that [the suit] is not interposed for any improper purpose. . . . " I.A.R. 11.1. There is not sufficient indication in the record that appeal was interposed for an improper purpose. Consequently, sanctions will not be imposed on appeal.

VI.

CONCLUSION

For the foregoing reasons, the order of the district court granting judgment on the pleadings is affirmed. In addition, the order of the district court awarding costs, fees, and sanctions against the Bowles is affirmed. Attorney fees are awarded to respondents, except respondent Alva Harris. Costs are awarded to the respondents.

Chief Justice TROUT, Justices SCHROEDER and WALTERS, and Justice Pro Tem JOHNSON, CONCUR.

Supreme Court, U.S.
FILED
DEC 28 2001
CLERK

No. 01-773

In The

Supreme Court of the United States

JOHN N. BACH, J. D. RITCHIE and ELAINE RITCHIE,

Petitioners,

v.

UNITED STATES OF AMERICA, INTERNAL REVENUE SERVICE, JAMES MASON, CINDY MASON, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Petitioners set out seven issues that they contend are presented for review in their petition. However, the only issue decided by the Ninth Circuit was that the district court did not abuse its discretion in dismissing the amended complaint with prejudice for the Petitioners' failure to comply with the pleading requirements of Fed. R. Civ. P. 8. (Petitioners' Appendix ("App.") 1-4) Thus, there is only one issue that is properly presented to this Court for review: "Did the Ninth Circuit Court of Appeals correctly determine that the district court did not abuse its discretion in dismissing with prejudice the Petitioners' amended complaint for failure to comply with the pleading requirements of Fed. R. Civ. P. 8?"

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RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondents Bonneville County, Byron Stommel, Kay Cortez, Gina Dixon, Charlotte Munns, Paul Wild, Glen Huderman, Ron Longmore, Blake Mueller, Jefferson County, Connie Keller, Blair Olsen, Stephen Clark, Madison County, Beth Reese, Lyle Saurey, Greg Moffat, Terry Bair, Sid Brown, Kipp Manwaring, David Sasser and Hamlin & Sasser (hereinafter "the County Respondents") submit the following brief in opposition to the petition for certiorari filed by Petitioners John N. Bach, J. D. Ritchie and Elaine Ritchie.

STATEMENT OF JURISDICTION

Petitioners have failed to identify any provision conferring jurisdiction on this Court for review on a writ of certiorari. However, it is not in dispute that this Court has jurisdiction pursuant to 28 U.S.C. § 1254(1) for review on a writ of certiorari of the decision of the Ninth Circuit.

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES AND REGULATIONS

The only issue in this case is the proper application of Fed. R. Civ. P. 8(a) and 8(e) which read as follows:

> (a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counter-claim, cross-claim, or third-party claim, shall contain . . . , (2) a short and plain

statement of the claim showing that the pleader is entitled to relief . . .

. . .

(e) Pleading to be Concise and Direct; Consistency.

(1) Each averment of a pleading shall be simple, concise, and direct. No technical forms of pleading or motions are required.

. . .

STATEMENT OF THE CASE

This case was initiated with the filing of an incomprehensible and verbose complaint on September 30, 1998. This complaint, brought by Petitioners and 13 other plaintiffs, was 54 pages long plus 19 pages of exhibits. It named 97 separate individual defendants, including five counties in the state of Idaho, and 23 separate county officials and/or employees.

Petitioners attempted service on the County Respondents more than 120 days subsequent to the filing of the complaint. The County Respondents thereafter filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(5) for insufficiency of service of process, and/or Fed. R. Civ. P. 4(m) for failure to serve the complaint within 120 days of its filing.

On June 1, 1999, the district court entered an order *sua sponte* dismissing the complaint with leave to amend. (App. 23-27) The district court noted that the complaint, when broadly construed, appeared to allege a conspiracy

between the Defendants to deprive the Plaintiffs of various constitutional rights and found that the complaint was "verbose, convoluted, and extremely difficult to comprehend" and that allegations were "irrelevant or stated in a conclusory fashion." (App. 24) The court held that the complaint's major flaw was "its lack of specificity. No attempt is made to match up the specific factual allegations and the specific legal claims to specific defendants. In other words, the complaint does not state which defendants are liable on which of the claims." (App. 24)

The district court's order also gave Petitioners specific direction to assist them in complying with Fed. R. Civ. P. 8. This advice included (1) that Petitioners identify which causes of action are brought against which specific Defendants, (2) that Petitioners separate the claims so that only one claim was pleaded under each heading or cause of action, (3) that Petitioners plead facts that are relevant to the various claims, and (4) that Petitioners review apparently meritorious motions to dismiss brought by some of the Defendants, and to appropriately adjust arguments and allegations in the amended complaint. (App. 25-26)

The district court ordered that Petitioners file an amended complaint within 30 days of the order and also "admonished that failure to amend so as to comply with Rule 8 may also result in dismissal with prejudice." (App. 27)

After receiving an extension from the court, Petitioners filed an amended complaint on August 2, 1999, which was not significantly changed from the original complaint. The County Respondents once again filed a

motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(5) and 4(m). Other defendants filed motions to dismiss asserting that the amended complaint still failed to comply with Fed. R. Civ. P. 8. On October 21, 1999, the district court entered an order of dismissal with prejudice as to all defendants. (App. 5-22)

The district court held that "[a]lthough plaintiffs in the instant action have made cosmetic changes to their complaint, it still does not comply with either Rule 8 or this court's previous order." (App. 8) The court also noted that although Petitioners were *pro se*, the lead plaintiff, John Bach, was a former attorney and "presumably capable of drafting a comprehensible and legally sufficient complaint setting forth plaintiffs' claims." (App. 10) Because all of the defendants were in the same position with regard to the sufficiency of the pleading, the district court dismissed the amended complaint as to all defendants. (App. 10)

The district court also noted that the County Respondents' Rule 4(m) motion to dismiss appeared to be meritorious, but declined to dismiss the amended complaint without prejudice on that basis, because of the dismissal with prejudice pursuant to Fed. R. Civ. P. 8. (App. 10-11)

Petitioners timely filed a notice of appeal, and after briefing, the Ninth Circuit, in an unpublished memorandum decision, held that the district court did not abuse its discretion in dismissing the case with prejudice for violation of Fed. R. Civ. P. 8. (App. 4) This is the only issue addressed by the Ninth Circuit, and is the only issue properly before this Court for review.

ARGUMENT

A. Standard Of Review.

In the Petition's section entitled "Jurisdiction," Petitioners reference Supreme Court Rules 10(a) and (c) as providing jurisdiction to this Court for consideration of the petition. This rule, however, does not deal with jurisdiction, but rather states that a petition for writ of certiorari "will be granted only for compelling reasons" and that the Court will consider (1) whether a decision of a court of appeals conflicts with a decision of another court of appeals on an important matter, (2) whether a court of appeals has decided an important federal question that conflicts with a decision of a state court of last resort, or (3) whether a court of appeals has so far departed from an accepted course of decision of judicial proceedings, or sanctioned such departure by a lower court as to justify the "exercise of this Court's supervisory power."

Based on these factors, Petitioners have not shown this Court any compelling reason to review the decision of the Ninth Circuit. Petitioners make no contention that the Ninth Circuit's decision conflicts with a decision of another United States court of appeals, or that it has decided an important federal question in conflict with the decision by a state court of last resort. At best, Petitioners attempt to show that the Ninth Circuit has departed from the accepted and usual course of judicial proceedings or sanctioned such a departure by the district court. No such showing has been adequately or convincingly made by Petitioners herein.

B. District Court's Power to Dismiss *Sua Sponte*.

Petitioners vaguely argue that the district court was beyond its power to enter the initial order of dismissal with leave to amend because it was done *sua sponte*. Petitioners contend that they have "found no statutory law, no rules nor even case law, that give a district court such jurisdiction, discretion, to issue such orders as presented for review herein." (Petition 9) However, case law does exist in support of such a *sua sponte* ruling by a district court.

In *Simmons v. Abruzzo*, 49 F.3d 83 (2nd Cir. 1995), the district court dismissed a *pro se* complaint *sua sponte* for failure to comply with Fed. R. Civ. P. 8. The Second Circuit Court of Appeals ultimately determined that the district court had abused its discretion in dismissing the complaint, but held that "[w]hen a complaint fails to comply with these requirements [of Rule 8], the district court has the power, on motion or *sua sponte*, to dismiss the complaint or to strike such parts as are redundant or immaterial." *Id.* at 86. Thus, the Ninth Circuit was not incorrect or outside the bounds of reasonable judicial action in entering its memorandum decision affirming the dismissal with prejudice, and the district court was within the proper exercise of its powers to enter the initial order of dismissal without prejudice *sua sponte*.

C. Standards for Fed. R. Civ. P. 8 Pleading/Dismissal With Prejudice.

Petitioners contend that the district court abused its discretion in dismissing the amended complaint with prejudice, but fail to show how that dismissal was an

abuse of discretion. In fact Petitioners do not even attach copies of the complaint or amended complaint to their petition. Certainly, if Petitioners desire to persuade this Court to accept their petition for review, they need to demonstrate to this Court the validity of their pleadings by attaching those pleadings in the appendix.

This Court addressed the standards for pleadings under Fed. R. Civ. P. 8 in *Conley v. Gibson*, 355 U.S. 41 (1957). In reference to Rule 8(a)(2), this Court noted that "all the Rules require is 'a short and plain statement of the claim' that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests." *Id.* at 47.

Notwithstanding the district court's advice to Petitioners on Fed. R. Civ. P. 8 pleading requirements, the amended complaint made only cosmetic changes, and ignored the district court's pleading suggestions. (App. 8-9) Petitioners apparently believe that the length of the complaint was the only concern addressed by the district court. They emphasize in their petition that the amended complaint was reduced in size, without any additional exhibits but do not discuss how the amended complaint addressed the other pleading suggestions of the district court. Length of the complaint, however, was not the principle concern of the district court. Rather, the district court was concerned that the complaint was "verbose, convoluted and extremely difficult to comprehend. In addition, many of the allegations are irrelevant or stated in a conclusory fashion." (App. 24) These concerns were never adequately corrected by Petitioners.

In reviewing whether a district court abused its discretion in dismissing a complaint for violation of Fed. R. Civ. P. 8, courts of appeal often look to whether the plaintiffs had been fairly warned that failure to comply would lead to a dismissal with prejudice. *Bautista v. Los Angeles Co.*, 216 F.3d 837, 841 (9th Cir. 2000). In *McHenry v. Renne*, 84 F.3d 1172 (9th Cir. 1996), the Ninth Circuit affirmed a ruling of a district court dismissing a complaint with prejudice after allowing the plaintiffs various opportunities to amend the complaint, and after having the magistrate judge review the complaint to assess the viability of the claims stated therein. The Ninth Circuit held that because dismissal with prejudice is a harsh remedy, a district court should look to see whether less drastic alternatives are available. *Id.* at 1178. The court emphasized, however, that the district court " 'need not exhaust [all less drastic alternatives] before finally dismissing a case.' " *Id.*, citing *Von Poppenheim v. Portland Boxing & Wrestling Commission*, 442 F.2d 1047, 1054 (9th Cir. 1971).

In *Nevijel v. North Coast Life Insurance Co.*, 651 F.2d 671 (9th Cir. 1981), the district court ordered that the plaintiffs file an amended complaint to comply with Fed. R. Civ. P. 8. Several defendants then moved to dismiss the amended complaint alleging that it did not comply with the rule. The district court granted the motions and dismissed the amended complaint with prejudice. The Ninth Circuit found that the district court had not abused its discretion. It held:

> We hold that no abuse of discretion occurred here. Though there are a wide variety of sanctions short of dismissal available, the

> district court need not exhaust them all before finally dismissing a case. The exercise of his discretion to dismiss requires only that possible and meaningful alternatives be reasonably explored, bearing in mind the drastic foreclosure of rights that dismissal effects.
>
> Here, the district court made such reasonable opportunities and alternatives available to appellant that dismissal was not an abuse of discretion. The original complaint, filed in November 1976, was verbose, confusing and almost entirely conclusory. . . . The second complaint . . . was equally as verbose, confusing and conclusory as the initial complaint. The court did not dismiss with prejudice until after appellants had submitted briefs supporting a motion to alter the judgment and a motion for permission to file a second amended complaint.

Id. at 674.

In *Bautista v. Los Angeles Co., supra,* the Ninth Circuit overturned a decision of a district court dismissing with prejudice a complaint for failure to comply with Fed. R. Civ. P. 8. The court held that the district court had not considered less drastic alternatives to dismissal, and that the district court's previous order granting the plaintiffs leave to amend "issued a bare-bones order with only a cursory direction to 'plead specific facts that would create an individual prima facie claim of age, race, or disability discrimination.' The court made no reference to Rule 8(a) or Rule 10(b), it did not specify what it required in the pleading, and it gave no warning that it would dismiss the next complaint with prejudice if it did not comply." *Id.* at 841.

In the case at bar, the district court's order of June 1, 1999, fulfilled all of the concerns set out above for a district court to explore less drastic measures than a dismissal with prejudice of the complaint. The court gave Petitioners explicit instructions on ways in which they should amend their complaint to comply with Fed. R. Civ. P. 8, and informed them that failure to comply would result in a dismissal with prejudice of their action. Rather than follow the suggestions of the district court, Petitioners filed an amended complaint that ignored those suggestions. On this basis, the Ninth Circuit reviewed the district court's order for abuse of discretion, and determined that there was no abuse of that discretion to justify overturning the dismissal.

CONCLUSION

Petitioners have failed to show this Court that there are compelling reasons for accepting the petition for writ of certiorari. The Ninth Circuit was correct in its determination that the district court did not abuse its discretion in dismissing with prejudice Petitioners' complaint. Such action by the district court did not depart so far from the accepted and usual course of judicial proceedings as to call for the exercise of jurisdiction in this Court. Rather, the district court was within its discretion to dismiss the amended complaint with prejudice because of

Petitioners' failure to follow its suggestions to bring their pleadings in compliance with Fed. R. Civ. P. 8.

DATED this 28th day of December, 2001.

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